

DECISIONS

OF THE

SUDDER DEWANNY ADAWLUT,

RECORDED IN ENGLISH,

IN CONFORMITY TO ACT XII. 1843.

No. XII.

JANUARY 1846.

ADVERTISEMENT.

The publication of the decisions of the Sudder Dewanny Adawlut, recorded in English, in conformity to Act XII. of 1843, has been directed by the orders of the Right Honorable the Governor of Bengal, under date the 8th January 1845, No. 64.

The selected cases now annually published, to serve as precedents and guides to the lower courts in matters of law and practice, will still continue to be published. The object of the present issue is simply to give all possible publicity to the decisions of the Sudder Court.

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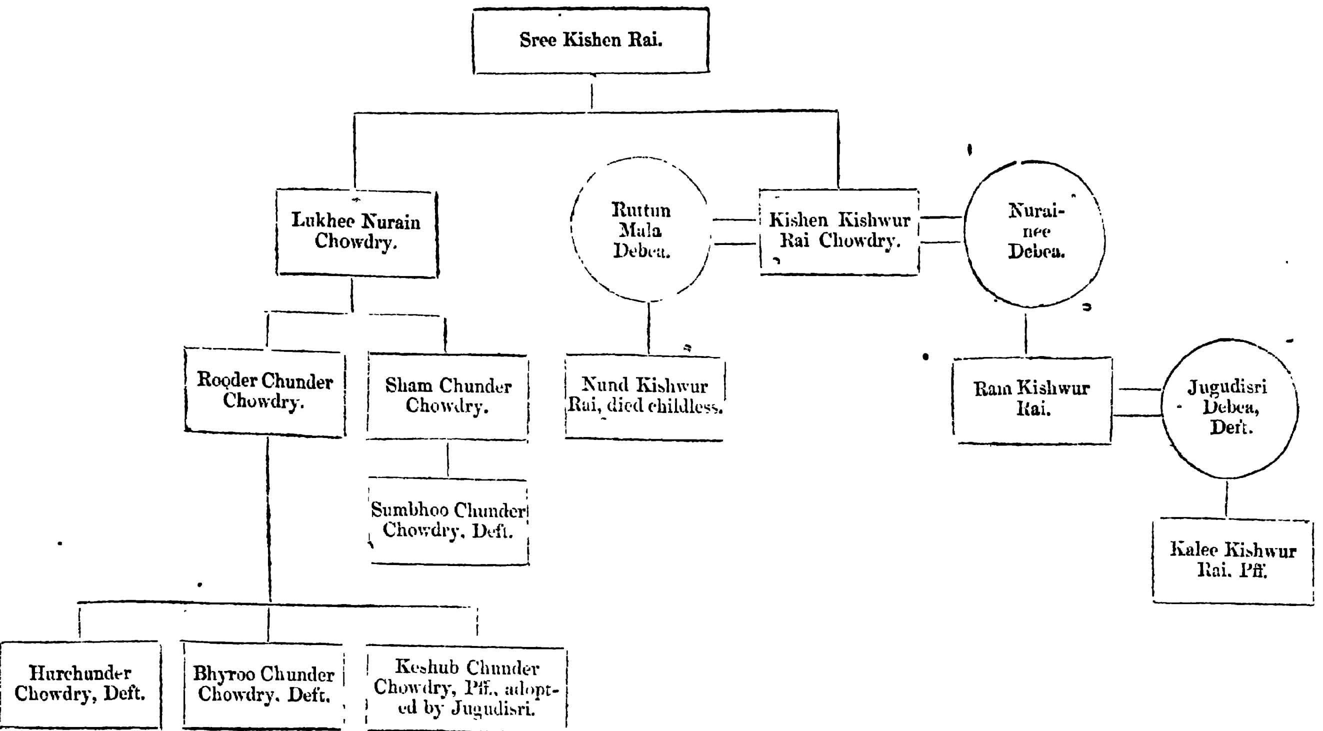
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Applications for copies of the DECISIONS to be made to MR. NORRIS, Sudder Dewanny Adawlut.



Sree Kishen Rai.
Lukhee Nurain Chowdry.
Ruttun Mala Debea.
Kishen Kishwur Rai Chowdry.
Nurai-nee Debea.
Rooder Chunder Chowdry.
Sham Chunder Chowdry.
Nund Kishwur Rai, died childless.
Ram Kishwur Rai.
Jugudisri Debea, Deft.
Sumbhoo Chunder Chowdry, Deft.
Kalee Kishwur Rai. Pff.
Hurchunder Chowdry, Deft.
Bhyroo Chunder Chowdry, Deft.
Keshub Chunder Chowdry, Pff., adopted by Jugudisri.

DECISIONS

OF THE

Sudder Dewanny Adawlut,

RECORDED IN ENGLISH, IN CONFORMITY TO ACT XII. 1843.

THE 15TH JANUARY 1846.

PRESENT:

J. F. M. REID,

JUDGE.

CASE No. 261 OF 1844.

Regular Appeal from the decision of the Judge of Rajshahye.

BHYROO CHUNDER RAI CHOWDRY, (ONE OF THE DEFENDANTS,) APPELLANT,

versus

KALEE KISHWUR RAI CHOWDRY, (PLAINTIFF,) RESPONDENT.

CASE No. 13 of 1845.

Regular Appeal from the decision of the Judge of Rajshahye.

KALEE KISHWUR RAI CHOWDRY, (PLAINTIFF,) APPELLANT,

versus

JUGUDISRI DIBEA, AND OTHERS, (DEFENDANTS,) RESPONDENTS.

THE original suit, out of which these two appeals arose, was instituted, in the zillah court of Rajshahye, on the 1st June 1841, (20th Jhyt 1248 B. S.,) by Kallee Kishwur Rai Chowdry, to recover possession of 4 annas of Turuf Kurrie, pergunnah Tilbers, and Tuppeh Hinda, pergunnah Sindoo Basoo, and a house in zillah Rajshahye, and 1 anna of pergunnah Nusseeroojeal in zillah Mymensingh, and a share in certain idols; the value of which, including mesne profits, was estimated at rupees 1,39,260, 2 annas, 7 pie.

The annexed genealogical table shows the family of the parties in this suit.

The plaintiff stated Kishen Kishwur Rai, having demised, left to his widows, Ruttun Mala Debea and Nurainee Debea, per-

mission each to adopt a son; in consequence of which Ruttun Mala adopted Nund Kishwur Rai, and Nurainee, Ram Kishwur Rai; that Nund Kishwur Rai having died without issue, Rooder Chunder Chowdry and Sham Chunder Chowdry, nephews of Kishen Kishwur Rai, instituted a suit in the zillah court of Mymensingh, to set aside the adoption of Ram Kishwur Rai and obtain possession of the estate as heirs at law, which was dismissed, on the 31st May 1802, by the zillah judge, and, on successive appeals, by the Dacca provincial court, the Sudder Dewanny Adawlut, and the King in Council, on the 13th May 1805, 21st August 1807, and 7th February 1835; that while the case was still pending appeal before the King in Council, Rooder Chunder Chowdry prevailed on Nurainee Debea, the adoptive mother, and Jugudisri Debea, the widow of Ram Kishwur Rai, who had adopted the plaintiff, by a promise of withdrawing the appeal, (which however he never did,) to execute two deeds of gift, granting to him the property mentioned above; and, in Bysakh 1220, took forcible possession thereof, which he retained till his death, when his sons, Hurchunder Chowdry and Bhyroo Chunder Chowdry, retained possession; that he being a minor at the time of this transaction, it was not in the power of his grandmother and mother to alienate the property, and disputes arising on his coming of age, the estate was attached; that the disputes having been adjusted by *razeenameh* and *soolehnameh*, he was put in possession on the 8th Assar 1236 B. S., (20th June 1829;) that he did not get a copy of the decree of the Privy Council, without which he could not sue, till the 10th Magh 1237 B. S., (21st January 1830,) and that, when he was about to sue, he was persuaded to forego his intention by the promises of Hurchunder and Bhyroo Chunder to settle the matter amicably. As they failed to do so, he instituted this suit by his original plaint against Jugudisri Debea, (Nurainee having died,) Hurchunder, and Bhyroo Chunder Chowdry, to recover possession of the estate and house in zillah Rajshahye, (the one anna of pergunnah Nusseeroojeal having been sold for public arrears,) laying his suit, including mesne profits, at 99,691 rupees 12 annas 3 pie; and by a supplementary plaint to recover the one anna of pergunnah Nusseeroojeal, the public sale of which had been set aside, and certain idols, estimating the total value of the property, including mesne profits, at 1,39,260 rupees, 2 annas, 7 pie. By the supplementary plaint he included among the defendants Bagheruttee Debea and her adopted son Anund Chunder Rai, (who appear to hold share in the estate of their common ancestor,) and Sumboo Chunder Chowdry, as being joint possessors of the idols, with the other defendants.

Bhyroo Chunder denied that the property in question was entirely the hereditary estate of Ram Kishore Rai, Nurainee

Debea having purchased the 1 anna of pergunnah Nusseeroojeal from her own peculiar funds (*stridhun.*) He also denied that the plaintiff had been legally adopted by the *Duttaca* form. He asserted that Nurainee and Jugudisri, fearing that they might lose all, were the decisions of the country courts reversed by the Privy Council, agreed to assign to his father Rooder Chunder Chowdry, on condition of his withdrawing his appeal, the property in question, with certain idols and their appurtenances, to pay him 7,000 rupees in cash, and to receive his third son Keshub Chunder Chowdry as a *paluc pootr*; that they accordingly, on the 20th Magh 1219, did execute the deeds of assignment, (Nurainee Debea alone signing the deed for Nusseeroojeal,) pay him 7,000 rupees in cash, and receive his son Keshub Chunder as a *paluc pootr* (not as *duttuc*) under the name of Kalee Kishwur Rai, receiving from him, Rooder Chunder, a razeenameh, bearing date the 18th Magh 1219; that Rooder Chunder obtained possession of the assigned property, and these facts being represented to the Sudder by Sumboo Chunder Chowdry, his name was erased from among the appellants to the Privy Council. To rebut the plea of the plaintiff, that he was a son adopted under the *Duttaca* form, who has all the rights and privileges of a natural born son, he asserted that after the plaintiff came of age, quarrels arose between him and Nurainee and Jugudisri, when the latter denied legality of the adoption, and the estate was attached by order of the Sudder Dewanny Adawlut; that the plaintiff, fearing to trust his case to a regular suit, threw himself on the mercy of these ladies, representing to them, that, having lost all claim on his natural father, he would be irretrievably ruined were his adoption set aside; and that an adjustment was made, whereby he received 1 anna 10 gundas of 4 annas of the zumindaree of Mymensingh and Zuffershahee, each of the ladies taking 1 anna 5 gundas, and a *razeenameh* and *soolehnameh* were regularly filed. Further, that when a partition of the idols assigned to their father took place between himself (Bhyroo Chunder) and his brother Hurchunder, the plaintiff arbitrated between them, causing the partition deeds to be drawn out by his own people; and again, that when he (Bhyroo Chunder) was unable to pay off a mortgage of 13 gundas, 1 cowry, 1 krant of the 1 anna of Kurric, &c. to Sumboo Chunder Chowdry, on the 12th Chyt 1248, the day fixed for payment, the plaintiff intervened and prevailed on the latter to grant, by a written agreement, an additional period of two months for the purpose. These acts he pleaded as admissions of the validity of the assignment to Rooder Chunder, and totally inconsistent with his present claim. The assignment and the adoption resting on the same deeds, he pleaded that they must stand or fall together; that the claim was barred moreover by rule of limitation, his father having had undisturbed possession for 18 years, and himself and his brother for 11 years, the plaintiff himself also

having allowed 19 or 20 years after attaining to majority (which event public documents showed to have occurred prior to 1230 B. S.) to elapse before he brought the present action; and that assignments of the nature of those pleaded, by Hindoo females to the heir at law, were not prohibited by the Hindoo law.

Jugudisri Debea denied the execution of the deeds of assignment, which she impugned as forgeries, and the payment of 7,000 rupees to Rooder Chunder Chowdry. She stated that she received the plaintiff, Keshub Chunder Chowdry, from his father Rooder Chunder Chowdry, under a *dhan putr*, dated the 18th Magh 1219 B. S., duly registered, and adopted him under the name of Kalee Kishwur Rai, and supported his claim to the estate of her husband as adopted son. She however acknowledged that, on the adjustment of the dispute between herself and her husband's mother on the one part and the plaintiff on the other, the plaintiff did not come into possession of the unincumbered estate, but agreed to take 1 anna 10 gundas out of 4 annas, leaving 1 anna 5 gundas to her and 1 anna 5 gundas to her mother, of which, on the death of the latter, 1 anna devolved on the plaintiff and 5 gundas on herself.

Hurchunder Chowdry, by his first answer, supported the statement of Bhyroo Chunder Chowdry; he subsequently filed a *soolehnameh* in which he stated that he and the plaintiff had come to an amicable adjustment, by which it was agreed that he should retain ½ anna of Nusseeroojeal, relinquishing to the plaintiff 2 annas of Turuf Kurrie and Tuppeh Hinda, and that the plaintiff should forego his claim to mesne profits.

Bagheruttee Debea in her answer declared that she had nothing to do with the case. Sumboo Chunder Chowdry confirmed the assertion of Bhyroo Chunder Chowdry, in regard to the intervention of the plaintiff in the matter of the mortgage, to him, by Bhyroo Chunder, of a portion of Turuf Kurrie, &c.

The landed property being situated in two districts, the permission of the Sudder Dewanny Adawlut was obtained for the suit being tried in zillah Rajshahye, in which the greater portion was situated. The suit came on before Mr. G. C. Cheape, who, on the 8th July 1844, dismissed the claim. After stating the case, and recording the abandonment of the appeal to the Privy Council by Rooder Chunder Chowdry, the judge proceeded to consider the probable grounds on which he abandoned it. He thought it clearly established, by the production of the deeds of assignment, and other deeds that were duly registered, that Rooder Chunder had done so to procure the adoption of one of his sons by Jugudisri Debea, and in consideration of the gift by her and Nuraince of the contested property. He observed that, on the same date on which the deeds of gift to Rooder Chunder were written, Nurainee gave plaintiff a *surub-adhikaree-putr*, (acknowledging him as her grandson by adoption and heir,) and Jugudisri an *ootheradhikaree-*

putr, (acknowledging him as her heir after her death,) which had been duly registered, which, after a lapse of 31 years, he considers as a sufficient proof of their execution. He proceeds to say: "Under these circumstances, though the assignment of lands by a Hindoo female, without the consent of heirs is illegal, I think such assignment to the heir at law not open to this objection; and, after such a length of time, and such delay in bringing this suit—MORE than twelve years after the plaintiff came of age, though within twelve years from the time when he was put in possession of the estate belonging to Ramkishore Rai (see ruffanameh and roobucaree of the judge of Mymensingh dated 30th June 1829,)—I think it would be inequitable to disturb the possession of the heirs of the grantee under the deeds of gift, given by the adopting mother and grandmother of the plaintiff to his *own* or real father, for purposes decidedly beneficial to the plaintiff, as it removed the opposition of his own father to the *title* of the plaintiff's ADOPTED father, and was instrumental to his adoption by the widow (herself a party to the gift,) and thus the attainment of the estates in zillah Mymensingh, which his own father, (also one of the two defendants in the present case,) had as heir at law a claim to." He therefore dismissed the claim, and provided that the decision should not affect what Hurchunder Chowdry had agreed to give up to the plaintiff. The costs of Hurchunder Chowdry were charged to himself; those of the other defendants, except Bhyroo Chunder Chowdry, "who will pay his own costs, as this investigation has been beneficial to him, and cleared up his title," to be charged to the plaintiff.

The plaintiff and Bhyroo Chunder Chowdry both appeal from this decision; the former in No. 13 of 1845 from that portion of it which dismissed his claim to the moiety in the possession of Bhyroo Chunder Chowdry, laying the appeal at 69,630 rupees, 1 anna and 3½ pie; the latter in No. 261 of 1844, from that portion which burdened him with his own costs amounting to 1,237 rupees 1 anna.

The case having, after several postponements, come before me again this day, I entirely concur in the view taken of the case by the zillah judge, Mr. Cheape. The plaintiff's claim is barred by the rule of limitations, in as much as he allowed a period of 18 years to elapse from the date of his attaining his majority, (some time in 1230 B. S.) to that of his instituting the suit (20th Jhyt 1248 B. S.) His plea, that the possession of Bhyroo Chunder was acquired by "violence, fraud, and unjust dishonest means," is not proved; the contrary fact, *i. e.* that the possession was freely and voluntarily resigned, is established by the strongest presumptive proof. The proceedings shew clearly to my satisfaction that the statement of Bhyroo Chunder is the true one; and that the grant of the contested property was made by the adoptive mother and adoptive grandmother of the plaintiff, for the purpose of inducing Rooder

Chunder,—who, with his brother Sham Chunder Chowdry, would, but for the adoption of Ram Kishwur Rai by the widow of Kishen Kishwur Rai, have been legal heirs to the property left by the last mentioned person,—to give up his natural-born son, the plaintiff, to be adopted by Jugudisri, and to withdraw his opposition to the adoption of Ram Kishwur Rai. Every thing was done in an open manner, and all the deeds affecting the transaction were duly registered. No opposition to the settlement appears to have been made by the other heir at law Sham Chunder Chowdry, for he did not appoint any counsel to prosecute his appeal before the Privy Council: it may therefore be presumed that he acquiesced in the settlement. Under these circumstances, I confirm the decision of the judge of Mymensingh, in as far as it dismisses the claim of the plaintiff to a moiety of the property sued for, and dismiss the appeal preferred by the plaintiff Kalee Kishwur Rai Chowdry. He will pay the costs awarded against him by the zillah decree, and all those incurred by all parties in this Court. It would have been necessary to refer the appeal preferred by Bhyroo Chunder Rai Chowdry to a full Court to determine whether he, having gained his cause in the lower court, should be made to pay costs. But as he has this day filed, through his vakeel, a petition withdrawing his appeal, that appeal also is dismissed, he paying the whole of the costs incurred in this Court.

THE 16TH JANUARY 1846.

PRESENT:

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 228 OF 1844.

Regular Appeal from the decision of the Principal Sudder Ameen of Jessore.

ISSURCHUNDER GHOSE, APPELLANT, (PLAINTIFF,)

versus

NILCUMUL PAL CHOWDRY AND OTHERS, RESPONDENTS, (DEFENDANTS.)

Claim: Possession of Turf Omedpore, &c. valued at 40,000 rupees, with wasilat at 55,000 rupees, total 95,000 rupees.

THIS claim was advanced in the zillah court on the 27th October 1843. The plaintiff stated that he had obtained a decree against Rajah Mohesh Chunder for possession of the estate in question, under a deed of mortgage, in the Calcutta Supreme Court; and possession was accordingly given to him. That the defendant also

subsequently got another decree for the same under another deed of mortgage, and on his attempting to get possession, the magistrate, under Regulation XV. 1824, upheld the possession of plaintiff, and this order was confirmed in appeal. That after this a third party, Madhooram, obtained a decree against the Rajah Mohesh Chunder, and the estate was sold in satisfaction of that decree; but the sale was reversed on defendant, Nilcumul Pal, paying the amount of the decree; and the defendant then obtained possession of the zemindaree, on giving security pending the decision of his, Nilcumul's, suit then pending before the provincial court. Nilcumul Pal's suit was transferred from the provincial court to the zillah court, on the abolition of the former tribunal; and on the 16th July 1834, the zillah court nonsuited the claim of Nilcumul. The plaintiff now states that the defendant's claim having been nonsuited, he is himself entitled to obtain possession, and has brought this suit to enforce his claim, and to obtain mesne proceeds during the occupancy of defendant.

The defendant stated that the decree of the zillah court, of 16th July 1834, did not adjudicate on his claim, but declared it beyond the authority of the court to adjudicate; adding that the plaintiff's claim was barred by the lapse of above 12 years; and that the sale, though reversed, held good as regarded plaintiff; because plaintiff had been allowed to pay the amount of the decree and obtain possession, and had neglected to do so; whereas defendant had actually paid the amount of the decree and had obtained possession accordingly.

The principal sudder ameen, on the 14th June 1844, dismissed the claim on three grounds:

1. That the plaintiff did not pay the amount due under Madhooram's decree; and the sale is therefore a bar to his claim.
2. That from the date of sale under that decree, more than 12 years had elapsed before this suit was brought.
3. That the court was not competent to decide upon matters connected with the execution of the decrees of the Supreme Court, upon which the claims of both parties were based.

On the 10th September 1844, the plaintiff appealed to this Court.

Opinion.

The order passed on the 16th July 1834 by the zillah judge, on the claim of Neilcumul Pal, was to this effect that, although Issurchunder's decree in the Supreme Court was prior to that of Neilcumul Pal, still as the estate would have been totally lost to both claimants had not Neilcumul paid the amount of the decree of Madhooram, he, Neilcumul, is to remain in possession; and the Supreme Court will decide regarding the conflicting claims under the two decrees of that Court,—the zillah court being unacquainted with the practice of the Supreme Court in such cases. The claim

therefore was not adjudicated; but an order of nonsuit was passed. This order was final. The present claim is precisely of a similar nature, and cannot, on the same grounds, be entertained; but farther than this, the former decision having declared that the present defendant is to remain in possession, the present claim to oust him must be dismissed. Although therefore I do not agree in all the grounds assigned by the principal sudder ameen, his order appears to me correct; the first and second reasons assigned appear to me erroneous. The sale having been set aside, is no bar to plaintiff's claim; and the possession of defendant, even for above 12 years, being conditional only and on security, is likewise no bar; but on the grounds I have above recorded, I see no reason to interfere with the order passed by the principal sudder ameen. Costs against the appellant.

THE 21ST JANUARY 1846.

PRESENT:

J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 93 OF 1842.

A Special Appeal from the decision of the Judge of Beerbhoom.

SHEEBNATH DUTT, HURNATH DUTT AND BISHEN-NATH DUTT, (PLAINTIFFS,) APPELLANTS,

versus

HEERA LAL BIRJBASEE, BENEE MADHUB CHUCKER-BUTTY, AND RAM NURAYN RAI, (DEFENDANTS,) RESPONDENTS.

THE plaintiffs, putneedars of talook Kendowlee, in pergunnah Sainpuharee, instituted this suit to recover possession of a mela, or fair, held in the village of Kendowlee for ten days from the sunkrant of Poos of each year, from Heera Lal Birjbasee, mohunt of the akhara of the idol Jye Deb Thakoor, from which they alleged the mohunt had dispossessed them in 1240 B. S., levying from the shop-keepers the chandnee jumma, or rent of the shops, laying their suit at 10 years' produce of the land on which the fair is held, or 4,001 rupees. They associated with the mohunt, as defendants, Benee Madhub Chuckerbutty and Ram Nurayn Rai, putneedars of Teekabeyta, on the plea that they advised the mohunt to dispossess them.

Heera Lal Birjbasee claimed to collect the chandnee jumma under sunnuds granted by a former raja of Burdwan, the zumeendars of the pergunnah, and also from the putneedars in virtue of a purchase from whom the plaintiffs became putneedars.

The suit was dismissed for informality by Mahomed Faik, the principal sudder ameen, on the 30th July 1838; but, having been restored to the file by order of the judge, who directed that officer to decide the case on its merits, it was again dismissed by him on the 30th November 1843, on similar grounds, permission being given to the plaintiffs to institute a new suit, accurately defining the land, and laying their suit at 18 years' produce.

A regular appeal having been admitted by the judge, J. H. D'Oyly, he proceeded to decide the suit on its merits. He was of opinion that the sunnud granted by Raja Tiloke Chund to Radha Rumun Birjbasee, former mohunt, on the 4th Aghun 1161 B. S., and a fusulchar, or confirmatory sunnud, dated 3d Kartic 1171 B. S., were satisfactorily proved, and that these deeds, and other evidence, oral and documentary, produced by the mohunt, established the right of that person to the rent leviable from the shops in the fair; and that the plaintiffs had totally failed in proving their right to levy any rents thereon. He therefore, on the 1st September 1841, dismissed the plaintiffs' claim with costs.

A special appeal in this Court was applied for, and granted on the 9th March 1840, by Messrs. Tucker and Reid, because the case was one of novelty, and because the judge had appeared rather to have gone beyond his authority in declaring the right of the defendant, instead of merely dismissing the plaintiffs' claim.

The case came on before Mr. Barlow, who, on the 19th September 1842, proposed to nonsuit the plaintiffs' claim, on the ground of informality, inasmuch as they had not properly described the boundaries of the land on which the mela, or fair, was held; when and in what manner they had been dispossessed; and because they had not laid their suit at 18 years' produce.

Mr. E. Lee Warner, on the 29th November 1842, thought that the plaintiff ought to be nonsuited; but did not think the suit should be laid at 18 years' produce.

The case next came on before Mr. Reid, who, being of opinion that the plaintiff in a case like the present should be allowed to lay his action at the amount in which he considered himself to be endamaged, and that there was no necessity to describe the boundaries of the land on which the fair was held, as it might vary every year, directed that it should be laid before a full Court.

The suit was accordingly brought before the Court this day.

Opinion.

The Court concur with Mr. Reid in the opinion that the suit should not be nonsuited; and that it was properly instituted at the

estimated value of the interest claimed. In regard to the merits of the case, the Court entirely concur with the zillah judge. As it is proved by the documents that the right of levying the chandnee rent in the mela claimed by the plaintiffs, has, long before the decennial settlement, been vested in the mohunt of the akhara in question, the Court see no reason to interfere with the order of the zillah judge and dismiss the appeal with costs.

THE 22D JANUARY 1846.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 91 OF 1844.

Regular Appeal from the decision of the Principal Sudder Ameen of Midnapore.

KISHEN PEREAH DASSEE, MOTHER, ON PART OF RADHEKA MOHUN AND KISHOREE MOHUN DASS, MINOR SONS OF RAJ NARAIN DASS, (DEFENDANT,) APPELLANT,

versus

JUGGUT NARAIN DASS, (PLAINTIFF,) RESPONDENT.

Amount of suit Rs. 43,429-14-11-2.

THE plaint in the case was filed on the 23d November 1842, and is as follows:

Goberdhun Dass had three sons, Raj Narain, Juggut Narain, Hurree Narain. On their father's decease the three sons succeeded to his estate. Hurree Narain died a minor, when disputes arose between the two surviving sons, in consequence of which some delay occurred in the partition between them. At length, on the 27th Maugh 1232 Umlee, they came to a settlement, and the defendant Kishen Pereah's husband, Raj Narain, executed an ikrar, acknowledging plaintiff's rights, and made it over to him, duly signed and sealed. One Kaleenath Ray held a decree against Raj Narain, and, in execution, attached the joint property of plaintiff and the said Raj Narain, calling it the property of the latter; on which plaintiff protested and claimed a half share, which was released by the judge. Plaintiff's brother, Raj Narain, claimed more than was his share of the estate, and plaintiff at length conceded his right to certain "neej-jote" lands, and on the 21st Jhet 1246, a deed of division was drawn out, in which the shares of both parties were specified. This was duly signed and sealed; two copies of it

were made, and one given to each of them, and each put in possession of his share. On the 31st Srabun 1246 Umlee, Raj Narain died, leaving his widow and two minor sons. Plaintiff goes on to say Rajah Punchanun, the widow Kishen Pereah's brother, would not carry out the agreement entered into by the deceased, Raj Narain, and objected to my having possession of the property detailed in my plaint, and proceedings were taken in the criminal court. I filed my documents; but the magistrate, on the 18th September 1841, gave the defendant possession, and his order was upheld in appeal. The defendant did not deny the property was hereditary, in the foujdary court. Under the Hindoo law, we are entitled to equal shares of it.

In the case instituted under Act IV. of 1840, I only claimed so much of the estate as was declared to belong to me under the deed of division. As however the defendant failed to carry it out, and denies my right altogether, I now claim a half share of the property, of which I was ousted by the magistrate's order above mentioned, and also a half share of the "neej-jote" lands, from the 21st Jhet 1246 Umlee, when the partition deed was executed, with mesne profits and interest thereon, also my share of the value of personals, with interest, and I sue for reversal of the magistrate's order and the deed of partition.

A supplementary petition was filed on the 4th April 1843, praying that the amount of mesne profits might be enquired into on the execution of decree. On issue of process for attendance of the defendant, the principal sudder ameen, in his proceedings of the 2d March 1843, directed an *exparte* investigation, as the defendant had failed to appear.

On the 4th April following, he rejected a petition put in by the defendant to be heard, as the case was ready for decision. On the 7th idem, the defendant was admitted to plead; and on the 20th idem, gave in her answer, saying that the plaintiff, on the 31st May 1836, filed a petition, admitting he was not in possession of the lakhiraj lands and tanks in talook Pyag. This fact is also proved by two other petitions presented in 1839 and 1840; in none of which any mention is made of the documents now brought forward, on which the claim is founded, and which, it is alleged, were executed by her husband. The answer further states defendant is in possession of such property only as was left by her husband; that she never ousted plaintiff; that Hurree Narain died in 1232 in the month of Bhadoon, and that half could not therefore have been divided between plaintiff and her husband in Maugh of the last mentioned year. After refusing to defend the case in its present form, defendant prays that it may be tried on the documents and proof adduced by the plaintiff.

The principal sudder ameen, on the 24th April 1843, passed judgment in favor of the plaintiff. He was of opinion that it was

fully proved that the property was hereditary; that plaintiff and defendant's husband were brothers, and as the defendant made no objections to the amount at which the action was brought, but only urged that the plaintiff was never in possession of the contested property, her pleas could not affect plaintiff's claims. He considered that the deed of division, dated the 21st Jhet 1246 Umlee, was established by the evidence of Mokteram Maytee, by whom it was written, and by the evidence of four other subscribing witnesses, and that it shewed the property was in the charge of the defendant's husband on account of the plaintiff up to the date of the division. The claim to a half share of the neej-jote lands he rejected, as by the partition plaintiff had relinquished his right to them. He disallowed the value of the ornaments, as plaintiff's witnesses were unable to state what was their weight. After deducting 500 beegahs of neej-jote lands from 1950 beegahs, detailed in the plaint, he decreed a half of the remaining 1426 beegahs, viz. 713 beegahs to plaintiff, with half of the residence of Jye Kishenpore, half of talook Pyag, half of the produce of the lands assigned for the worship of the thakoor, half of a remuneration called * *nimuk birtee* and *nuggudbirtee*, with costs rateably and interest thereon, and mesne profits from the date of the magistrate's order above mentioned, to be declared in execution of decree, as well as 582 rupees value of personals with interest thereon. Should any of the parties, who have protested in this case, be dissatisfied, they can sue regularly to establish their claims.

An appeal was preferred to this Court by the defendant, urging that she was engaged in the prosecution of other suits and could not look after her interests in the present case. That Goberdhun Dass, her father-in-law, during his life time divided his property between his sons, who held accordingly. Goberdhun died in 1231, and Hurree Narain in Bhadoon 1232. That her husband enjoyed his defined share till 1241, when he died. That she succeeded to him and has enjoyed her share of the property. That the plaintiff (respondent,) in connivance with Rajah Lukhee Narain, after the division made by Goberdhun Dass, and in opposition to the terms of it, has instituted this suit to deprive her of her late husband's estate.

The Court see no reason for interference with the decision of the lower. The appellant, (defendant,) before the principal sudder ameen, refused to plead in answer to the plaint filed by the

* *Nimuk birtee.* The special grant of certain quantities of salt by a number of molungees, salt manufacturers of a division, to certain individuals, who receive the same either in kind or money.

Nuggud birtee. This is a donation from the proceeds of the collective quantity of salt allotted by each molungee at the commencement of the weighing of their manufacture of the season, for religious and charitable purposes, in order to secure a good omen.

respondent. In her petition of appeal, she brings forward new matter no where alluded to in the original suit; such matter cannot be heard; the Court therefore dismiss the appeal, with costs.

THE 24TH JANUARY 1846.

PRESENT:

J. F. M. REID,

JUDGE.

PETITION NO. 893 OF 1844.

IN the matter of the petition of Musst. Punchumee Dossee, filed in this Court, on the 7th October 1844, praying for the admission of a special appeal from the decision of C. T. Davidson, Esq., acting judge of Mymensing, under date the 30th August 1844, confirming that of Mr. C. Mackay, principal sudder ameen of that district, under date 24th February 1844, in the case of petitioner, plaintiff, *versus* Anund Chunder Chowdry, and others, defendants. It is hereby certified that the said application is granted on the following grounds:

The plaintiff having sued to obtain possession of certain lands in talook Bejoy Ram Doss, in pergunnah Sheerpoor, zillah Mymensingh, the principal sudder ameen dismissed the claim as barred by the rule of limitation, without shewing in what manner that rule bears upon the case. The judge confirmed the decision. The principal sudder ameen ought to have shewn distinctly in what manner he considered the claim to be barred; as, until he does so, it is impossible for this Court to determine whether the decision is just or not. This decision is therefore considered incomplete, and a special appeal having been admitted, it is

ORDERED,

That the case be sent back to the principal sudder ameen, with instructions to detail at length, in his decree, the grounds on which he considers the rule of limitations applicable, and then pass a final order. The value of the stamp, on which the petitions of appeal and special appeal are written, will, as usual, be returned to the petitioner.

THE 27TH JANUARY 1846.

PRESENT:

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE NO. 249 OF 1840.

Regular Appeal from the decision of the Principal Sudder Ameen of 24-Pergunnahs.

DENOBUNDOO BANNERJEE, DECEASED, HIS WIFE, ANUND MOYE, PAUPER, APPELLANT, (PLAINTIFF,)

versur

MUDDUN MOHUN BONNERJEE, GOOROO DASS AND OTHERS, RESPONDENTS, (DEFENDANTS.)

THE plaintiff sued for the lands mentioned below, viz. 2 annas garden land, (Baghat Arminee and Bahmun Gachee,) 12 annas Mahlool Shunker Nundee, zillah 24-pergunnahs, 2 annas Talookah Dhora Dhur, including Abhypore, Sendpara, and other mouzas, in zillah Nuddea.

The suit is laid at Rs. 10,918-9-1.

The plaintiff brings forward this claim as heir of Lalbeharee his father, who died in Jet 1230, leaving several sons, and having made a will on the 11th Aghun 1229; and the lands claimed form the share of the landed property left by the said Lalbeharee.

The defendants assert that the 12 years having elapsed from the death of Lalbeharee before this suit was filed, the action is barred by the rule of limitations. The defendant, Goordas, admits that the 12 annas in Shunkernundee did belong to plaintiff, and states that Goordas now holds possession of it under a farm for 51 years from plaintiff, given to his father Gour Mohun:—this farm is denied by the plaintiff.

On the 30th December 1839, the principal sudder ameen, Radagobind, decreed the 12 annas Shunkernundee in possession of plaintiff, and dismissed the rest of his suit.

The plaintiff, dissatisfied with this decision, appealed to the Sudder Dewanny Adawlut; and his appeal was admitted *in forma pauperis* on the 13th June 1840.

On the 9th June 1842, Mr. A. Dick, Judge, Sudder Dewanny Adawlut, recorded his opinion that the claim of the plaintiff to the lands of Shunkernundee and to the garden land, the Baghat Arminee, &c. should be admitted; the claim on the talookah Dhoradhur, to be dismissed. On the 13th August 1842, Mr. R. Barlow recorded his opinion that the whole claim should be dismissed under the

rule of limitations, more than 12 years having elapsed from Jet 1230, the date of Lalbeharee's death, to the 30th Magh 1242, or 11th February 1836, on which date the plaint was filed in this case.

On the 24th November 1842, Mr. J. F. M. Reid recorded his opinion, that the rule of limitations barred the claim to the lands of talookah Dhoradhur and the garden land, for the reason recorded by Mr. Barlow; but he differed from Mr. Barlow in regard to the lands Shunkernundee, the defendant having admitted that the plaintiff was the rightful owner of 12 annas in that estate, and merely claim the right to hold it, under a lease, in farm for 51 years, given by the plaintiff Denobundoo, the term of which had not yet expired. Mr. Reid considered that although plaintiff denied the validity of this lease, his claim was not therefore barred: he proposed to adjudge to plaintiff possession of 12 annas Shunkernundee, dismissing the rest of his claim.

I concur in the opinion recorded by Mr. J. F. M. Reid. The rule of limitations clearly prevents the Court from entertaining the suit for the talookah Dhoradhur and the garden land; that portion of the claim must therefore be dismissed; but this rule does not apply to the Shunkernundee lands,—the person in possession stating that he holds possession as plaintiff's farmer, which cannot be looked on as a "fair title conveying a right of property," the expression used in the regulation on this head; the claim to this land may therefore be heard. I find no sufficient proof of the farm for 51 years having been actually given, there being neither proof nor probability to support it. I would therefore reject the defendant's claim under the lease, and would award possession of 12 annas Shunkernundee to plaintiff.

Ordered therefore that the decree issue adjudging 12 annas Shunkernundee to plaintiff, with mesne proceeds from the date of the decree of the principal sudder ameen; the remainder of plaintiff's claim is dismissed—costs of the zillah court to be paid as laid down in the decree of the principal sudder ameen—costs of appellant in the Sudder Dewanny Adawlut (in proportion to the value of the portion of the claim adjudged to plaintiff) against defendant Goordass Bonnerjee—the whole of the respondents' costs in this Court against respondent.

THE 28TH JANUARY 1846.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 23 OF 1845.

Special Appeal from the decision of the Judge of East Burdwan, dated 12th September, 1842.

GHOSAIN DOSS, APPELLANT,

versus

GHOLAM MOHEEOODDEN AND ANOTHER, RESPONDENTS.

Claim—Possession of Bs. 5-10, Garden Land in Alumgunge, held by the defendant, under an invalid lakheraj tenure, laid at 297 *Rupees.*

THE claim is for the resumption and assessment of a small lakheraj tenure, held by defendant in Alumgunge, under Regulation II. 1819. The plaintiff grounds his claim on the circumstance that the defendant has no good proof that the land in question is entitled to be exempted from rent.

The defendant produces, in proof of his right to hold the land rent-free, three deeds of sale of the years 1204, 1207, and 1211, by which the land was transferred under the description of *lakheraj, aymah, mowroosee;* and states that it has ever since been held free of rent, and that it was so held by Zoolfecar Khan before the decennial settlement. Several witnesses of great age, 70 and 80 years, are produced, who attest the possession of the defendant is rent-free as long as they can recollect.

The claim was thrown out, on the 22d September 1841, by the collector; and his decision was afterwards confirmed by the judge of zillah Burdwan, under date the 12th September 1842.

On the 14th December 1844, Messrs. Reid and Tucker admitted a special appeal on the following grounds:—"There is no proof in this case of possession under a *lakheraj* grant prior to the decennial settlement; subsequent possession is insufficient to sustain a claim to hold as rent-free, and on this the decision is grounded."

Judgment of Messrs. Reid and Jackson.

In this case, the judge has erroneously assumed that it was incumbent on the plaintiff to prove previous possession of the land in dispute as *mal*, and he rests his decision mainly on the want of such proof, citing clause 4, Secticon 30, Regulation II. 1819, as requiring it. That enactment however contains no such rule; on the contrary it directs that the holder of the tenure shall produce his papers to shew his right to hold rent-free; and the zemindar shall be allowed to comment on them. In this case, the plaintiff stands in the place of the zemindar, and unless defendant establish his right to hold rent-free, the plaintiff is entitled to demand rent from him, and should gain his suit, unless there is any thing in the limitation of time in bringing such suits, which bars the admission of his claim. We know of no such limitation with regard to such suits. It has been already held by this Court, that the neglect to demand rent for 12 years does not deprive the zemindar of the right to demand it, when he pleases to do so. The documents and witnesses filed in this case prove that the land has been held since 1204 *lakheraj*; but there is no *sunnud* or grant of the land, nor does it appear that any such grant has been registered; there is therefore no proof that the land is rent-free, except occupation as rent-free since 1204, or considerably since the decennial settlement. Even the witnesses of 80 years of age cannot speak personally to possession before the decennial settlement. In the absence therefore of such proof, we do not think the defendant entitled to hold the land rent-free; and we adjudge to plaintiff the right to assess and demand rent under the regulations, reversing the decision of the zillah judge. Costs against respondent.

Judgment of Mr. Dick.

Under Regulation XIX. Section 11, Clause 2, 1793, no claim to hold land rent-free shall be heard in any court of justice, if the land has been subject to the payment of rent during the 12 years previous to the institution of the suit. The converse must therefore in equity be held good—that no suit, for land held exempt during 12 years previous to the institution of the suit, can be heard.

I cannot concur in the opinion that suits to break rent-free tenures, in other words, for resumption, are not subject to the law of limitation. It seems to me in direct contradiction to clause 2, Section 11, Regulation XI. 1805, which subjects "all claims on the part of Government, whether *for the assessment* of land held exempt from the public revenue without legal and sufficient title to such exemption," &c. to the law of limitation of 60 years, and, of course, the claims of a like nature of individuals, who all hold of Government, to the law of limitation of 12 years applicable to them.

In the present instance the existence of the rent-free tenure has been proved nearly 50 years back, and it seems to me preposterous to expect more.

As to there being no registry of the *sunnud* of the grant, as required under the law of 1793, there is no proof that the proclamation for such registry was ever duly promulgated under that law, or that registers were duly prepared for the purpose. It is notorious, that in some districts not a trace of the law having been duly published and the registers formed, exists. Consequently the law cannot be held binding, especially after such a lapse of time.

There are cases which, under Regulation XIX. of 1793, and Regulation III. 1828, are excepted from the law of limitation. They must, however, be classed under the general head of fraudulent acquisition; all of which are excepted by clause 3, Section 11, Regulation II. 1805. But the *onus probandi* in them all rests on the plaintiff—in the former cases, proof of the acquisition of the tenure subsequent to the year 1790—in the latter, of possession by force or fraud: for unless "such violent or fraudulent acquisition be established to the satisfaction of the Court in which the claim may be preferred," the claim is barred by lapse of time prescribed.

I have already shewn by reference to clause 2, Section 11, Regulation XI. 1805, that the mere fact of the claim being for "the assessment of land held exempt from the public revenue," without legal and sufficient title to exemption, forms no exception to the law of limitation, on the contrary, is positively and expressly subjected to it.

THE 28TH JANUARY, 1846.

PRESENT:

J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 134 OF 1837.

A Regular Appeal from the decision of the Judge of Rajshahye.

DOST MAHOMED KHAN CHOWDRY, PLAINTIFF, APPELLANT,

versus

KASHEE-ISREE DEBEA, AND AFTER HER DEATH HER SON, ANUND PERSHAD RAI, DEFENDANT, RESPONDENT.

THE plaintiff, the proprietor of a kharijah talook, consisting of 3¼ annas of mouzah Goonaree Gaon, Ealmuneepoor *alias* Dutpara,

&c. instituted this suit in the zillah court of Rajshahye, to obtain possession of 8 beegahs 5½ biswas of rent-paying land in Lalmuneepoor *alias* Dutpara from Moost. Kashee Isree Debea, on the plea that she had obtained possession thereof, with the aid of the police, in execution of the order of the magistrate under Regulation XV. 1824, which awarded to her possession thereof as 8 beegahs 2 biswas of burmooter land sold to her husband, Kishen Pershad Rai, by Kishen Nurayn Thakoor as his share of 17 beegahs 5½ biswas of burmooter land held in the names of Panch Kowree Thakoor and Bhyroo Kunt Thakoor. Suit laid at 7 rupees per beegah, Rupees 57, 12 Annas on a stamp value 4 rupees.

Kashee Isree Debea pleaded that her husband having purchased the 8 beegahs 5½ biswas of burmooter land in Lalmuneepoor, on the 15th Kartic 1231 B. S., for 94 rupees, from Kishen Nurayn Thakoor, he and herself had held possession till 1241, when the plaintiff illegally attaching it, she had recovered possession by order of the magistrate.

The suit having been referred to the collector, under Section 30, Regulation II. 1819, for report, that officer returned it, stating that though it had been pending before him for nine months, the defendant had not filed any proof of a rent-free tenure, which therefore he considered as not proven.

The acting judge of Rajshahye, D. C. Heyland, dismissed the plaintiff's claim on the 13th January 1837, on the plea that he had adduced no proof that the land was *mal;* and that a decree of the zillah court of Rajshahye, dated 22d May 1804, proved that, on the complaint of Chunder Nurayn Sirma Thakoor and Bhyroo Kunt Sirma against the former zumeendar, 17 beegahs 5 biswas of burmooter land in Lalmuneepoor were decreed to the plaintiff; and the defendant's kubaleh, the fact that Kishen Nurayn Thakoor *alias* Panch Cowree, son of Chunder Nurayn Sirma, had sold 8 beegahs 2 biswas of that land in 1231 B. S. to the husband of the defendant. As the decree aforesaid had become final, he was of opinion that no one could afterwards impeach the validity of the rent-free tenure; and that moreover the posssession of the defendant had been proved in the Regulation XV. 1824 case, in the course of which the mokhtear of the plaintiff had asserted his client had no claim over the land entered in the kubaleh.

The plaintiff preferred an appeal to the Sudder Dewanny Adawlut. The appeal was taken up by Mr. Barlow, who, on the 12th February 1841, proposed to reverse the judge's decree, on the ground that the decree of 1804 had merely determined the question of possession of the alleged burmooter land, without any investigation as to the validity of the tenure, and that the defendant had filed no sunnud to prove that the land was really rent-free.

Mr. Lee Warner, on the 1st March 1842, recorded his opinion, that, though the rent-free tenure was not proved, the long posses-

sion of the party, from whom the defendant's husband purchased, and of the defendant herself, entitled her to retain possession, and proposed to decree that the plaintiff was at liberty to demand rent from the defendant at the purgunnah rates, and to oust her from possession only in the event of her refusing to engage for the rent on such terms.

The case next came on before Messrs. Lee Warner, Reid and Barlow, who, at a joint sitting, on the 2d July 1842, sent back the case to the judge, with instructions to proceed under the rule laid down in the circular order of 20th August 1841, and require the plaintiff, by a supplementary plaint, to make up the amount of the stamp to 18 years' produce of the contested land.

The judge having found the produce of 8 beegahs 5½ biswas to be 8 annas per beegah, or 4 rupees 2 annas 2 gundas per annum, of which 18 years' produce amounted to Rs. 74-7-1-2, the plaintiff filed a supplementary petition on an additional stamp value 4 rupees, and a similar supplementary petition of appeal was filed in this Court, and Anund Pershad Rai appeared to defend the appeal in the place of his mother, Kashee Isree Debea, who had demised. The case having been once before a full Court, it was thought proper that it should be finally decided by a full Court, and was accordingly brought on this day.

Judgment of Messrs. Reid and Jackson.

The decision of the register, filed in this case, dated 22d May 1804, merely shews that the former zemindar admitted the right of the occupant to hold rent-free, and allowed him so to hold his tenure; but the present zemindar has the same rights as were possessed by the zemindar at the time of the decennial settlement, being the successor of an auction purchaser. The decision in question therefore is insufficient to establish the right to hold rent-free; besides this document, the defendant has nothing but possession in which to found his claim to hold rent-free. He has no sunnud, nor is his tenure registered, nor is there proof that he was in possession before the grant of the dewanee. We therefore consider the claim to hold rent-free not established, and, reversing the decision of the zillah judge, decree to the plaintiff the right to resume and assess the land, and to collect the rents of the same under the regulations.

Judgment of Mr. Dick.

I hold that claims, such as this, to assess lands held as rent-free, are subject to the law of limitation. Such claims on the part of Government are positively and expressly so subjected under clause 2, Section 2, Regulation II. 1805; consequently, as a matter of course, all claims on the part of zemindars, &c., whose rights are derived from and dependent on the rights of Government. Since therefore there is unexceptionable proof the respondent's father

bonâ fide purchased the property in 1231 B. Æ. or 1824 A. D., from one who, it is also in proof, had possession in 1804, and that his father and mother had held quiet possession rent-free, under a *bonâ fide* legal title, upwards of 12 years, his right under clause 2, section 3, of the above cited regulation, cannot be questioned, and the judge's decision should be upheld.

THE 28TH JANUARY 1846.

PRESENT:

J. F. M. REID and

A. DICK;

JUDGES,

and

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE NO. 177 OF 1843.

Special Appeal from the decision of Mr. John Dunbar, Judge of Midnapore.

BULRAM PUNDA AND BISHESHUR PUNDA, APPELLANTS,

versus

SHEIKH GOOL MOHUMUD, AND AFTER HIS DEATH, KUSSUDUT OONNISSA, HIS WIFE, RESPONDENT.

THE respondent sued the appellants, in the collector's court of Midnapore, on the 29th May 1838, under Section 30, of Regulation II. of 1819, to recover possession of 45 beegahs 16 kuttahs of rent-paying land, situated in the respondent's tenure, called mouzah Kooee and others, and which was fraudulently held by the appellants as rent-free land.

The appellants stated, that the respondent himself admitted, that he had obtained possession of mouzah Kooee and others in 1228; and they further urged, that for 22 years before, the respondent had been in possession of the same mouzah, as farmer, during the whole of which time he had never sued for rent, and that his action was accordingly barred by the rule of limitation. They pleaded that they and their ancestors had, for several generations, been in possession of 31 beegahs 5 kuttahs of rent-free land, and referred to papers, which, they asserted, had been filed in 1207, in which the

above land was entered as rent-free, and to a letter from the late Board of Revenue, dated the 26th May 1803, stating that the rent-free land (in which it is asserted the disputed land is included) should be exempted from assessment.

On the 26th May 1841, the deputy collector decided for the plaintiff, with costs; the defendants having failed to produce any deed of grant, by which the validity of their alleged rent-free tenure could be upheld, and it not being apparent that the disputed land was included in that referred to in the Board of Revenue's letter, and the defendants' witnesses speaking only from hearsay to the point of long continued exemption from the payment of revenue.

This decree was confirmed by Mr. Dunbar, on the 24th February 1843.

A special appeal was admitted in this case, by Messrs. Tucker and Reid, on the 21st June 1843; because an action, under Section 30, of Regulation II. of 1819, ought to have been to resume, and assess, unlawful rent-free land, and not to obtain possession of the same; because the value was incorrectly laid; and because it was doubtful, whether the action were not barred altogether by the rule of limitation.

Judgment of Messrs. Reid and Jackson.

The case, this day, came to a hearing. It appears to Messrs. Reid and Jackson, that the suit is not barred by the rule of limitation; and further that no sufficient proof has been adduced by the defendant that he holds the land in question under a good and valid rent-free grant: no grant whatever is filed, and it appears that none has ever been exhibited. Possession since the acquisition of the dewanee gives no claim to hold rent-free. We are therefore of opinion that the claim of the plaintiff, to resume and assess the land in question, is established, and decree the same. Costs against the appellant.

Judgment of Mr. Dick.

I hold that this suit too is untenable by lapse of time. My reasons are fully recorded in the cases Nos. 23 of 1845 and 134 of 1837, this day decided.

THE 28TH JANUARY 1846.

PRESENT:

J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 178 OF 1843.

Special Appeal from the decision of Mr. John Dunbar, Judge of Midnapore.

KOOSE CHUCKERBUTTEE, APPELLANT,

versus

SHEIKH GOOL MOHUMUD, AND AFTER HIS DEATH, HIS WIFE, KUSSUDUT OONISSA, RESPONDENT.

The circumstances of this case are similar to those set forth in the case No. 177 of 1843, both in respect of the pleadings of the parties, the grounds of the decisions of the deputy collector and the judge, and the reasons of Messrs. Tucker and Reid for admitting a special appeal.

JUDGMENT OF MESSRS. REID AND JACKSON.

The same order was accordingly passed, and the plaintiff was declared competent to resume and assess the land in dispute. Costs against the appellant.

JUDGMENT OF MR. DICK.

The same as in No. 177 of 1843, this day decided.

THE 28TH JANUARY 1846.

PRESENT:

J. M. F. REID and

A. DICK,

JUDGES,

and

W. B. JACKSON,

OFFG. TEMPORARY JUDGE,

CASE No. 13 OF 1844.

A regular Appeal from the decision of the Principal Sudder Ameen of Dacca, stationed at Furreedpore.

MR. HENRY GLOISTER FRENCH, (PLAINTIFF,) APPELLENT.

versus

KISHEN KOOMAR KHAN, (DEFENDANT,) RESPONDENT,

RAJ NARAYN KHAN AND BHOBUN MOHUN KHAN, THIRD PARTY.

THE plaintiff, as dur-putneedar of mouzah Gopeenathpore Muhesh-shumaeel and Cachbanda, pergunnah Nuldee, instituted this suit, on the 11th May 1842, to compel the defendant to pay an annual rent of rupees 5208-12-0, 235 khadas, 8 pakhees, 23 khanees, 3 reg of land, less 61 khadas, 8 pakhees, 23 khanees, 3 reg of putit, or uncultivated land, or 173 khadas, 10 pakhees of cultivated land, at 1 rupee 14 annas per khanee.

The defendant stated that in Bysakh 1224, he obtained a pottah for the three mouzahs in question, from Chundee Pershad Singh, the duly constituted mokhtar of Kishen Chunder Singh, the zumeendar of pergunnah Nuldee, at a jumma of 2401 rupees. That, on going into the villages, he found that the land was in such bad state of cultivation that it produced but 1600 rupees, and, consequently, threatened to throw up his lease unless he got assistance from the zumeendar. That the mokhtear declined giving any pecuniary assistance; but told him that he had authority from his master, in the event of any of the under tenants cultivating their lands at their own expense, to agree not to demand from them any enhanced rent, or *abwab*, beyond what was entered in their pottahs. That the mokhtear, in Assar, of the same year, granted

him a *khut*, or letter, to that effect; and that he had brought the land into cultivation, and paid the abovementioned rent up to the present day. That, on the death of Kishen Chunder Sing, his son, Sri Narain Sing, being a minor, the estate was taken under the charge of the Court of Wards, who granted an *ijareh* or farm thereof to Kalee Churn Dhole, who gave a *durijareh* to Uddit Churn Sircar. That this last named person having sued him, the defendant, for an increased rent of 5500 rupees, got a decree in the zillah court of Dacca Jelalpoor, which, however, was reversed by the Dacca provincial court, on the 22d November 1826, who upheld his jumma of 2401 rupees, leaving the zumeendar to sue regularly to raise the rent. That Raja Sri Narain Sing, coming of age, applied to the Sudder Dewanny Adawlut for a special appeal, which application was rejected on the 29th August 1829. He pleaded that as neither the Rajah, nor his mother, Ranee Kutteanee, after his death, had sued to raise the rent, the plaintiff could not sue,—his claim being barred by lapse of time. He also pleaded that the plaintiff should also have sued his brothers, his co-partners. This plea the plaintiff met by the assertion that the defendant acquired the pottah in his own name; and that therefore he had nothing to do with the brothers.

Raja Nurayn Khan and other brothers of the defendant, intervened and prayed to be allowed to defend the suit as co-partners with him.

The principal sudder ameen of Dacca, stationed at Furreedpore, Syad Abas Ali Khan, was of opinion that the khut, or letter, signed for the zumeendar by Chundee Pershad Singh, his mokhtear, bearing date 32d Assar 1224 B. S., whereby it was conditioned that the defendant's rent of 2401 rupees shall not be enhanced, was proved by the evidence of the witnesses, who also prove that the mokhtear had full authority to grant such a deed; and that the deed had been acted upon for upwards of twelve years, and had not been impeached by the zumeendar, Raja Sri Narain Sing, when it was filed in the Sudder Court. As, therefore, the dur-ijarehdar had failed in the provincial court to enhance the defendant's rent of 2401 rupees, and as the zumeendar, whose right to sue to enhance the said rent had been decreed by that court, had not availed himself of that right, for a period exceeding twelve years, the principal sudder ameen, on these grounds and others mentioned in the decree, dismissed the claim, with costs, on the 8th September 1843, as barred by the rule of limitation.

The plaintiff, having appealed from this decision, the case was taken up by Mr. Gordon, and by him referred to a full bench.

On the case coming before a full bench, the vakeel of appellant, Gholam Sufdur, stated that he had several documents of importance to the case of his client, which he wished to file; adding that his client was unable to file them in the zillah court, as he was before

ignorant of their existence. On looking over these documents, it appears to the Court that they are material to the issue of the case.

Ordered, therefore, that the papers now filed by the appellant be placed with the nuthee, and the case be returned to the principal sudder ameen, with directions to restore the case to its number in the file, and to give due notice to the defendant, and allow him to file any documents, or witnesses, which he may wish to produce to meet the exhibits now filed by plaintiff. He will then decide the case afresh in the usual course. The costs of this appeal to be paid by the appellant.

THE ACTS

OF THE

GOVERNMENT OF INDIA,

RELATING TO THE BENGAL PRESIDENCY.

ACT No. I. OF 1846.

Passed by the Hon'ble the President of the Council of India in Council on the 7th of January 1846.

An Act for amending the Law regarding the appointment and remuneration of Pleaders in the Courts of the East India Company.

1—3. *Portions of the Bengal, Madras, and Bombay Codes, repealed.* 4. *Description of persons eligible for the office of pleader, and mode of qualifying for it.* 5. *Barristers of the Supreme Court entitled to plead in the Sudder Courts, under the rules in force regarding pleaders.* 6, 7. *Remuneration of pleaders not to be at fixed rates, nor specified in vakulutnameh: what costs to be adjudged on account of pleaders' fees in regular and in miscellaneous cases.* 8. *Pleaders how to recover their fees.* 9. *Fee for legal opinions.* 10. *Principal sudder ameens and sudder ameens competent to fine pleaders, subject to appeal.* 11. *Rules in force in zillah courts to be applicable to pleaders in the moonsiffs' courts.* 12. *Moonsiffs competent to fine pleaders, subject to appeal.* 13. *Certain courts in Madras excepted from the operation of the Act.*

1. It is hereby enacted, that Section 15, Regulation XXIII. 1814, clause seventh, Section 2, clause eleventh, Section 3, clause fourth, Section 8, Regulation XXVI. 1814, clause third, Section 3, Section 7, clause first, Section 15, Sections 23, 24, 28, 29, 32, 33, 34, 35, clause first, Section 39, Regulation XXVII. 1814, clause second, Section 10, Regulation XXVIII. 1814, Section 9, Regulation XIX. 1817, Section 6, Regulation XI. 1826, Section 30, Regulation V. 1831, Section 7, Regulation IX. 1831, Section 11, Regulation VII. 1832, Regulation XII. 1833 of the Bengal Code, and Act No. XIII. of 1838, be repealed.

2. And it is hereby enacted, that clauses second and third, Section 14, Regulation VI. 1816, Section 7, clause first, Section 15, Sections 23, 24, 28, 29, 32, 33, 34, 35, Regulation XIV. 1816, clause seventh, Section 4, clause eleventh, Section 5, clause fourth, Section 8, Regulation XV. 1816, clause third, Section 6, Regulation I. 1827, clause third, Section 6, Regulation VII. 1827, Section 5, Regulation VI. 1828, Section 4, Regulation IV. 1832 of the Madras Code, be repealed.

3. And it is hereby enacted, that clause third, Section 47, clause second, Section 48, Section 55, Regulation II. 1827 of the Bombay Code; and so much of clause first, Section 7, Regulation XXIX. 1827 of the same Code, as empowers the zillah judges of the Deccan and Kandeish to examine pleaders and grant certificates of qualification to practise in their courts, be repealed.

4. And it is hereby enacted, that the office of pleader in the courts of the East India Company shall be open to all persons of whatever nation or religion: provided that no person shall be admitted a pleader in any of those courts unless he have obtained a certificate in such manner as shall be directed by the Sudder Courts that he is of good character and duly qualified for the office, any law or regulation to the contrary notwithstanding.

5. Provided nevertheless, and it is hereby enacted, that every barrister of any of Her Majesty's Courts of Justice in India, shall be entitled as such to plead in any of the Sudder Courts of the East India Company, subject however to all the rules in force in the said Sudder Courts applicable to pleaders whether relating to the language in which the Court is to be addressed or to any other matter.

6. And it is hereby enacted, that Section 25, Regulation XXVII. 1814, of the Bengal Code, Section 25, Regulation XIV. 1816, of the Madras Code, and Section 52, Regulation II. 1827, of the Bombay Code, shall cease to be enforced, excepting for the purpose specified in Section 7 of this Act.

7. And it is hereby enacted, that parties employing authorized pleaders in the said courts shall be at liberty to settle with them by private agreement the remuneration to be paid for their professional services, and that it shall not be necessary to specify such agreement in the vakalutnama: provided that when costs are awarded to a party in any regular suit, original or appeal, decided on the merits, against another party, the amount to be paid on account of fees of pleaders, shall be calculated according to the rules contained in the Sections of Regulations specified in Section 6 of this Act; and that when costs are awarded in other cases the amount to be paid on account of such fees shall be one-fourth of what it would have been in a regular suit decided on its merits.

8. And it is hereby enacted, that private agreements between parties and their pleaders respecting the remuneration to be paid for professional services shall not be enforced otherwise than by a regular suit.

9. And it is hereby enacted, that so much of Section 20, Regulation XXVII. 1814 of the Bengal Code, and of Section 20, Regulation XIV. 1816 of the Madras Code, as prescribes the rate of fees to be received by authorized pleaders for legal opinions, be repealed; and that persons taking such opinions from authorized pleaders shall be at liberty to settle with them by private agreement the remuneration to be paid for such opinions.

10. And it is hereby enacted, that whenever a pleader has rendered himself liable to a fine in the court of a principal sudder ameen or sudder ameen, it shall be competent to such principal sudder ameen or sudder ameen to impose such fine: provided that an appeal from all orders imposing such fines shall lie to the zillah or city judge, whose decision thereon shall be final.

11. And it is hereby enacted, that the rules applicable to pleaders in the courts of the zillah and city judges, shall henceforth be applicable, so far as they are capable of application, to pleaders in the moonsiffs' courts.

12. And it is hereby enacted, that whenever a pleader has conducted himself in such a manner in the court of a moonsiff as would have rendered him liable to a fine if he had so conducted himself in the court of a zillah or city judge, it shall be competent to such moonsiff to impose such fine: provided that an appeal from all orders imposing such fines shall lie to the zillah or city judge, whose decision thereon shall be final.

13. And it is hereby enacted, that nothing in this Act contained shall apply to vakeels who may be employed in the courts of the village moonsiffs, or before the village or district punchayets, or before the collectors of zillahs, under the provisions of Regulations IV., V., VII. and XII. 1816 of the Madras Code.

ACT No. IV. OF 1846.

Passed by the Hon'ble the President of the Council of India in Council on the 7th of January 1846.

An Act for amending the Law regarding the Sale of Land in Execution of Decrees in the Territories subject to the Presidency of Fort William in Bengal.

1, 2. *Portions of enactments repealed.* I. RULES FOR THE LOWER PROVINCES. 3. *Courts to attach and sell lands, in execution of decrees, without reference to collectors, subject to the rules in force for the sale of real property by the courts.* 4. *Decree-holder to file extract from the collector's register, for insertion of the jumma in notification.* 5. *Deposit of 15 per cent. to be made by purchaser, and be forfeited on failure to complete the purchase.* II. RULES FOR THE NORTH WESTERN PROVINCES. 6. *Collectors to attach and sell lands, in execution of decrees, except in cases where the courts are now authorised to do so.* 7. *Particulars which the courts' requisitions to collectors are to contain.* 8. *Proclamation of sale what to specify and how to be issued.* 9. *Rule of section 5 to be applicable.* III. RULES COMMON TO THE LOWER AND THE NORTH WESTERN PROVINCES. 10. *Sales in execution of decrees to be of the nature of private transfers.* 11. *The Sudder Courts to frame rules for the attachment and sale of property, in execution of decrees, subject to the sanction of the Government of India.* 12. *Pending requisitions to the collectors not affected by this Act.* 13. *The operation of the Act limited to the Mofussil.*

1. It is hereby enacted, that so much of Sections 10 and 11, Regulation I. 1793, Section 7, Regulation XXVII. 1795, Sections

37 and 38, Regulation XXV. 1803, and Sections 27 and 28, Regulation IX. 1805, as relates to the adjustment of the Government jumma on lands exposed to public sale in satisfaction of the decrees of the courts of civil judicature, Regulations XLV. 1793, XX. 1795, and XII. 1796, Sections 15 to 26, (both inclusive,) Regulation XXVI. 1803, so much of Sections 27 and 28 of the same Regulation as relates to the satisfaction of decrees, and clauses second and third, Section 4, Regulation VII. 1825, all of the Bengal Code, be repealed.

2. And it is hereby enacted, that all Regulations or parts of Regulations which extend any of the Regulations or parts of Regulations herein before repealed, be also repealed.

3. And it is hereby enacted, that in the territories subject to the Presidency of Fort William in Bengal, except the North West Provinces, attachments and sales of land, or of any interest in land, in satisfaction of the decrees or other process of the courts of civil judicature, shall be made by such courts or under their directions; and that the rules now in force for the attachment and sale of such real property as the courts of civil judicature are now authorized to sell in satisfaction of decrees, without application to the revenue authorities, shall apply to attachments and sales made under the authority of this Act.

4. And it is hereby enacted, in addition to the said rules, that in the said territories, except as aforesaid, whenever a holder of a decree of any court of civil judicature shall apply to such court for the sale in execution of any estate paying revenue to Government, or any portion of any such estate, he shall, at the time of making such application, file an authenticated extract from the register of the collector's office, specifying the jumma of such estate, which shall be inserted in the notification of sale.

5. And it is hereby enacted, in addition to the said rules, that in the said territories, except as aforesaid, the purchaser at any such sale shall be required to deposit immediately either in cash, Bank of Bengal notes, or post bills, or Government securities duly endorsed, fifteen per cent. on the amount of his bid, and in default of such deposit such land or interest therein shall forthwith be put up again and sold; and if the purchaser having paid the deposit required shall neglect or refuse to pay the purchase money, within the period which may be stipulated, the deposit shall be forfeited and shall be applied as if it were purchase money, and the land or interest therein, or such portion thereof as may be sufficient to satisfy what remains due, shall be again put up to sale, due notification having been first given.

6. And it is hereby enacted, that in the North West Provinces of the territories subject to the Presidency of Fort William in Bengal, attachments and sales of land or of any interest in land in satisfaction of the decrees or other process of the courts of civil

judicature, shall (except in the case of land which the courts themselves are now by law authorized to attach and sell) be made by the collector or any of his subordinate officers under his directions, upon the requisition of such courts.

7. And it is hereby enacted, that in the last mentioned Provinces, every such requisition shall specify the number of the suit, the court which made the decree, the amount to be realized, the names of the parties, distinguishing those whose land or interest it is intended to sell, and the amount for which each is liable, if they are severally liable, and the land or interest which each is alleged in the schedule of the party applying for execution, to be possessed of.

8. And it is hereby enacted, that in the last mentioned Provinces the collector shall issue a proclamation in the current language of the country of any intended sale of land or any interest therein, thirty days at least before the day appointed for the sale, exclusive of the day of sale, and of the day on which the proclamation is issued; and the said proclamation shall specify the name of the person whose land or whose rights and interests in certain land are to be sold, and the jumma of the estate constituting the property, or in which the property is situate, also particulars of the property to be sold, of the time and place of sale, and of the amount due for the recovery of which the sale is ordered; and such proclamation shall be fixed up in some conspicuous place within the village or town in which the said land is situate, or which is nearest to the said land, and in the cutcheries of the local moonsiff, of the collector, of the zillah or city judge, and of the court from which the requisition issued.

9. And it is hereby enacted, that in the last mentioned Provinces the provisions contained in Section 5 of this Act shall be applicable to sales of land or any interest in land in execution of decrees of court or other judicial process.

10. And it is hereby enacted, that in the territories subject to the Presidency of Fort William in Bengal, sales of land or of any interest in land in execution of decrees of court or other judicial process, shall be of the nature of private transfers.

11. And it is hereby enacted, that in the territories subject to the Presidency of Fort William in Bengal, the Courts of Sudder Dewanny Adawlut shall, from time to time, frame such rules as to them shall seem meet, and as shall not be repugnant to any thing in this Act contained, for the attachment and sale of property in satisfaction of decrees or other process of the courts of civil judicature, which rules shall, after they have been approved by the Governor General of India in Council, have the same force as if they had been part of this Act, until revoked by the said Courts of Sudder Dewanny Adawlut with the approbation of the said Governor General of India in Council, or by the said Governor General of India in Council.

12. And it is hereby enacted, that in the territories subject to the Presidency of Fort William in Bengal, all applications which may have been made by the courts of civil judicature to the revenue authorities for the sale of land, or of any interest in land in satisfaction of decrees or other process of such courts, previously to the passing of this Act, shall be proceeded upon as if this Act had not been passed.

13. And it is hereby enacted, that nothing contained in this Act shall affect the process of Her Majesty's Supreme Court of Judicature or of the Court of Requests at Calcutta, or of any Court in the Settlements in the Straits of Malacca.

CIRCULAR ORDERS

OF THE

SUDDER DEWANNY ADAWLUT.

TO THE CIVIL AND SESSION JUDGES AND MAGISTRATES.

The 9th January, 1846. *Public Works.*

PURSUANT to the orders of Government, of the 17th ultimo, I am directed by the Court to forward to you, for your information, copy of a letter No. 2207, of the 17th idem, addressed by the Under Secretary to the Government of Bengal to the Military Board.

From the Government of Bengal to the Military Board, No. 2207, *dated the* 17*th December,* 1845.

It was deemed advisable to invite the opinions of the civil authorities before coming to a final determination in regard to Lieutenant Colonel Garstin's suggestion for amending the existing system of counter-signature, by civil officers, of plans and other documents relating to public works; and I am now directed by the Deputy Governor of Bengal to state, for the information of your Board, that the majority of the officers so consulted concur in the view expressed in your letter No. 8243, of the 18th April last, as to the expediency of allowing such officers an opportunity of offering remarks regarding public works connected with their respective departments.

2. Such a check, His Honor doubts not, is useful, especially in regard to works executed at stations seldom visited by the executive engineers. Adverting, however, to the misapprehension so generally prevalent among civil officers in regard to the object of counter-signatures, (which are deemed by some as implying a tacit approbation or confirmation of the statements contained in the documents to which they are affixed,) His Honor desires that the present mode of obtaining such attestations be discontinued, and that a separate heading be introduced in all documents requiring counter-signature, for the remarks, if any, of civil functionaries, and, when they have none to make, for the simple record of the fact. But whether any observations are recorded by civil officers or not, they will be given to understand distinctly, that no papers are to be unnecessarily detained by them; and for the purpose of ascertaining upon whom the blame of delay may rest, the executive engineers should be required invariably to note the dates of despatch, and civil officers those of receipt and return.

3. Orders to this effect will be issued to the heads of departments under this Government, and your Board are requested to address corresponding instructions to the executive engineers within the same circle.

(Signed) A. TURNBULL,
Under Secy. to the Govt. of Bengal.

TO THE CIVIL JUDGES.

The 9th January, 1846. *Moonsiffs' Records.*

THE Court have reason to believe that it is the practice of moonsiffs to deposit their records at the nearest thannahs, when they are absent from their stations, during the vacations, or at any other time. As this is an objectionable practice, the Court are pleased to direct that, except at the vacations, moonsiffs, who are about to avail themselves of leave of absence, will leave their records in the custody of their umlah; and that, at the vacations, when the umlah are permitted to go to their homes, they will pack up the records in boxes, sealing the boxes in the usual manner, and placing a guard of peons over the cutcherry during their absence.

TO THE CIVIL JUDGES.

The 16th January, 1846. *Stamps.*

I AM directed by the Court, in compliance with the request of the superintendent of stamps, to forward to you, for your information, and that of the principal sudder ameen and sudder ameen of your district, copies of a new "stamp office" stamp, impressed on a new description of water-marked stampt paper, which is to be issued from the stamp office, in supersession of the lithographic and steel-die impressions hitherto in use.

2. In addition to the bicolored impression, all stamps issued from the stamp office will bear the "General Treasury" steel-die counter-stamp as heretofore.

TO THE CIVIL JUDGES.

The 23d January, 1846. *Stamps.*

A DOUBT having arisen as to the admissibility of a claim to restitution of the stamp duty, levied on plaints and petitions of appeal, in cases in which the plaintiff, or appellant, may file a

" bazdaweh," the Court request the attention of the civil authorities in the lower provinces to the following remarks.

2. It has been sometimes argued, that a " bazdaweh" and razeenameh, or soolehnameh, having the same effect of removing the pending suit from the file of the court, must be considered identical for all the purposes contemplated by Article 10, Schedule B, Regulation X. of 1829, or in other words, that whether the instrument represent the act of one party, as a " bazdaweh," or of both parties to the suit, as a soolehnameh, rafanameh or razeenameh would do, it will equally entitle the party delivering it to refund of stamp duty.

3. The majority of the two Courts of Sudder Dewanny Adawlut, however, observe, that the adjustment mentioned in Article 10, Schedule B, Regulation X. of 1829, and Section 2 of Regulation XIII. of 1810, implies an *amicable settlement of the claim by the mutual consent of both parties,* and that, consequently, a " bazdaweh," if its terms purport simply a withdrawal of the claim or appeal on the part either of plaintiff or appellant, cannot be held to confer upon the party delivering it a right to reimbursement in the amount of stamp duty, levied on the plaint or petition of appeal. It may be added, in support of the above distinction, that though the document designated a razeenameh *may be executed* by one party, it should imply some act of concession or consent on the part of his adversary, and cannot, in the absence of such act of concession, or mutual agreement, be deemed a bonâ fide instrument of the kind denoted. By a " soolehnameh" and " rafanameh," also, the Court understand an instrument requiring and bearing the acknowledgment and verification of both parties to the suit, which would ordinarily entitle the plaintiff or appellant, to a refund of the stamp duty.

4. The Court desire by the foregoing observations to intimate, that a written application, under whatever denomination, notifying an " adjustment" of the point in dispute, that is to say, an amicable settlement thereof by the mutual consent of both parties, is sufficient to entitle the party, presenting it, to the benefits of Article 10, Schedule B, Regulation X. of 1829.

5. The authorities, who may presume that this point has been already ruled by Construction No. 977, will be pleased to observe, that the term " dustbardaree" occurring therein signifies a verbal relinquishment of the claim and not any written instrument of the nature of a " bazdaweh."

CIRCULAR ORDERS

OF THE

NIZAMUT ADAWLUT.

To the Civil and Session Judges and Magistrates.

The 9th January, 1846. *Public Works.*

Pursuant to the orders of Government of the 17th ultimo, I am directed by the Court to forward to you, for your information, copy of a letter No. 2207, of the 17th idem, addressed by the Under Secretary to the Government of Bengal to the Military Board.

From the Government of Bengal to the Military Board, No. 2207, *dated the* 17*th December,* 1845.

It was deemed advisable to invite the opinions of the civil authorities before coming to a final determination in regard to Lieutenant Colonel Garstin's suggestion for amending the existing system of counter-signature, by civil officers, of plans and other documents relating to public works; and I am now directed by the Deputy Governor of Bengal to state, for the information of your Board, that the majority of the officers so consulted concur in the view expressed in your letter No. 8243 of the 18th April last, as to the expediency of allowing such officers an opportunity of offering remarks regarding public works connected with their respective departments.

2. Such a check, His Honor doubts not, is useful, especially in regard to works executed at stations seldom visited by the executive engineers. Adverting, however, to the misapprehension so generally prevalent among civil officers in regard to the object of counter-signatures, (which are deemed by some as implying a tacit approbation or confirmation of the statements contained in the documents to which they are affixed,) His Honor desires that the present mode of obtaining such attestations be discontinued, and that a separate heading be introduced in all documents requiring counter-signature, for the remarks, if any, of civil functionaries, and, when they have none to make, for the simple record of the fact. But whether any observations are recorded by civil officers or not, they will be given to understand distinctly, that no papers are to be unnecessarily detained by them; and for the purpose of ascertaining upon whom the blame of delay may rest, the executive engineers should be required invariably to note the dates of despatch, and civil officers those of receipt and return.

3. Orders to this effect will be issued to the heads of departments under this Government, and your Board are requested to address corresponding instructions to the executive engineers within the same circle.

(Signed) A. TURNBULL,
Under Secy. to the Govt. of Bengal.

TO THE CRIMINAL AUTHORITIES IN THE REGULATION AND EXTRA REGULATION PROVINCES.

The 9th January, 1846. *Translates of Regulations.*

I AM directed to forward to you the accompanying revised Persian and Bengalee versions of Clause 1, Section 4, Regulation II. of 1807.

قانون دوم سنه ۱۸۰۷ عيسوي .

دفعهٔ چهارم

ضمن اول

هرکس که در حضور حکام عدالت ديواني يا نظامت يا کسي حاکم ديگر که اختيار گرفتن حلف داشته باشد از روي حلف يا حلف نامه نسبت بکدام مراتب مقدمه مرجوعه عدالت ديواني يا نظامت عموماً و نسبت بمراتبيکه در انکشاف حقيقت مقدمه اهم و ضروري است خصوصاً عمداً باظهار دروغ پردازد آن کس بر تقدير ثبوت جرم مرتکب جرم گواهي کذب متصور شده مستحق سزاي مذکورهٔ دفعهٔ بالا خواهد گرديد فقط

৪ ধারা।

১ প্রথম প্রকরণ। দেওয়ানী আদালতের কিম্বা ফৌজদারি আদালতের সাহেবদিগের হজুরে কিম্বা সরকারের অন্য যে কোন কার্য্যকারক সাহেবের প্রতি দিব্য করাইবার ভার আছে তাঁহার সাক্ষেতে কেহ কোন দেওয়ানী কিম্বা ফৌজদারি মোকদ্দমার নিষ্পত্তি সম্পর্কীয় কোন ভারি কথাতে জানিয়া শুনিয়া শপথের কিম্বা সুকৃতিপত্রের পাঠের অন্যথাচরণ করিয়া মিথ্যা জোবানবন্দি করিয়া দেয় তাহাকে মিথ্যা সাক্ষিদিগের মধ্যে গনা যাইবেক এবং উপরের ধারার লিখিত সাস্তি পাইবার উপযুক্ত হইবেক ইতি।

To the Magistrates and Joint Magistrates.

The 9th January, 1846. *Moonsiffs' Records.*

I am directed by the Court to transmit to you, for your information, the accompanying copy of a circular addressed to the civil judges regarding the custody of the records of the moonsiffs absent from their stations on leave.

To the Civil Judges.

The Court have reason to believe that it is the practice of moonsiffs to deposit their records at the nearest thannahs, when they are absent from their stations, during the vacations, or at any other time. As this is an objectionable practice, the Court are pleased to direct that, except at the vacations, moonsiffs, who are about to avail themselves of leave of absence, will leave their records in the custody of their umlah; and that, at the vacations, when the umlah are permitted to go to their homes, they will pack up the records in boxes, sealing the boxes in the usual manner, and placing a guard of peons over the cutcherry during their absence.

ADVERTISEMENT.

THE publication of the decisions of the Sudder Dewanny Adawlut, recorded in English, in conformity to Act XII. of 1843, has been directed by the orders of the Right Honorable the Governor of Bengal, under date the 8th January 1845, No. 64.

The selected cases now annually published, to serve as precedents and guides to the lower courts in matters of law and practice, will still continue to be published. The object of the present issue is simply to give all possible publicity to the decisions of the Sudder Court.

RECEIPTS.

MR. R. NORRIS acknowledges with thanks the receipt of the sums noted below from the undermentioned Subscribers.

J. S. Torrens, Esq., ...	25	0	R. E. Cunliffe, Esq., ...	14	0
E. Deedes, Esq., ...	20	0	Baboo Colly Chunder Roy,..	12	0
R. Hampton, Esq., ...	14	0	Major J. R. Ouseley, ...	6	12

TERMS OF SUBSCRIPTION.

With reference to the uncertainty as to the extent to which the pamphlets may run, the price is regulated by the number of sheets in each: thus,

For a pamphlet not exceeding 16 pages, the price is 8 annas;

For one above 16 pages, but not exceeding 24 pages, 12 annas; and so on.

Applications for copies of the DECISIONS to be made to MR. NORRIS, Sudder Dewanny Adawlut.

THE 3D FEBRUARY 1846.

PRESENT:

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 72 OF 1837.

Regular Appeal from the decision of the Additional Judge of Jessore.

JYDOORGA AND OTHERS, APPELLANTS, (DEFENDANTS,)

versus

REIMUNEE AND AULUGMUNEE, WIDOWS OF PREM CHUNDER; KALEEPERSAD, CHUNDER MOHUN, AND UMBEKA, RESPONDENTS, (PLAINTIFFS.)

THIS is a claim for wasilat, or mesne proceeds, of the mouza Digulgaon, which was decreed to Prem Chund, the husband of Alugmunee and Reimunee, by the provincial court, under date the 22d August 1827. The present claim therefore rests on that decision; the plaintiffs claiming as heirs of Prem Chund, or his successors.

On the 31st August 1836, the additional judge of Jessore decreed in favor of plaintiffs for 17,817 rupees, at the rate of 655 rupees per annum, for 21 years, from 1213 to 1234.

The defendant Jydoorga appealed to this Court.

On the 7th September 1841, the case was heard before Mr. Lee Warner, who recorded his opinion that the mesne proceeds should be decreed at the rate of 495 rupees for 21 years, with interest from the date of the petition of plaint for possession of the disputed estate.

On the 22d January 1842, two of the plaintiffs, Reimunee and Alugmunee, gave in a petition, stating that the plaint in this case was drawn out contrary to their wishes and intention, that they never intended to admit that Kaleepersad and others had shares in the claim, which was their own exclusive right as heirs of their husband, Prem Chund.

On the 17th May 1842, Mr. R. Barlow recorded his opinion in the case, to the effect that the plaintiffs, Reimunee and Alugmunee, alone were entitled to the award, not the other plaintiffs, whose names appeared to have been inserted in the plaint as sharers, fraudulently. Mr. Barlow decreed wasilat for 21 years, 9 months, at 495 rupees a year, and interest from the date of the present plaint, after deducting the Government revenue.

After this, the case came before Mr. J. F. M. Reid, who, on the 17th December 1842, delivered his opinion, fully agreeing in the award of Mr. Barlow, with the exception that he would decree in favor of the whole of the plaintiffs, whose disputes among themselves, the Court might leave them to settle hereafter by suit or otherwise. He directed the case to be re-submitted to Mr. Barlow, for consideration.

On the 23d January 1843, Mr. Barlow, after re-consideration, adhered to the opinion first recorded by him.

On the 29th January 1846, four petitions were given in by the plaintiffs in this case, stating that they had arranged the disputes among themselves, and fixing the shares in the wasilat arbitrarily among themselves.

OPINION.

The award should be in favor of the plaintiffs, Alugmunee and Reimunee, who are the heirs of Prem Chund, in favor of whom the decree was given. Their admission of the shares of the other plaintiffs contained in the plaint is set aside by the denial conveyed in their subsequent petition, and by the remark of the zillah judge in the mokhtarnameh at the time of attesting it. But the subsequent petition given in by these very plaintiffs, stating the new arrangement which has been made among the plaintiffs, seems to contradict their former denial, and admits that the other plaintiffs are entitled to a portion of the wasilat. However, I agree with Mr. Reid that the exact amount of the share of the plaintiffs is not to be decided in this case. I would, therefore, decree in favor of the plaintiffs generally, for the wasilat in question.

Ordered therefore, that the decree of the zillah judge be modified; and taking the mesne proceeds of mouzah Digulgaon at the rate of 495 rupees a year, for 21 years, 9 months, (viz. 10,766-4,) from which is to be deducted the Government revenue for that period, (viz. rupees 5,344-6-2-2,) the remainder (viz. 5,421-13-17-2) be awarded to the plaintiffs generally against all the defendants,—also interest upon the sum decreed from the date of filing the plaint in this case, and interest on the whole amount from to-morrow to the date of payment, and that costs, in proportion to the amount awarded to the plaintiffs, be given against the defendants, and that this decree issue in the joint names of Mr. J. F. M. Reid and Mr. Welby Jackson, who have concurred in the award.

If the plaintiffs have any dispute regarding their shares in the wasilat among themselves, they may arrange it either privately or by suit in court, to which this decision shall be no impediment.

THE 4TH FEBRUARY 1846.

PRESENT:

J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 31 OF 1843.

Regular Appeal from the Principal Sudder Ameen of Tipperah.

RAM TUNOO' SHA, (DEFENDANT,) APPELLANT,

versus

MR. HENRY ROE, (PLAINTIFF,) RESPONDENT.

Pleaders—Neel Munee and Ghoolam Sufdur for Appellant, and Mr. Skinner and Pursun Koomar for Respondent.

THE respondent sued to cancel a lease of twenty years, possessed by appellant, of a property, which he, respondent, afterwards purchased. The ground on which he places his right to cancel the lease, is that the appellant gave a deed of agreement at the time of obtaining the lease, that he would give sufficient security for the fulfilment of the conditions of the lease within three months, which he failed to do. He also advanced incidentally that the lease was not valid, as it was not given by Gunga Narain, the adopted son and co-partner and heir of the Chowdrain Rooknee, who alone gave the lease.

The appellant answered that he had never given the deed of agreement alleged by plaintiff; that he had been put into possession, had paid the Government revenue and the rent due to Rooknee, and was in peaceable possession until disturbed by plaintiff. And as to Gunga Narain, his right and interference in the property were merely nominal; that Rooknee had subscribed his name in the deed with her own; as he was registered in the collector's office jointly with her as proprietor; that he had never objected, but moreover had admitted his lease in the foujdaree court, and denied any participation in the sale to plaintiff, therefore his admission now could not avail.

The principal sudder ameen gave a decree in favor of plaintiff; cancelling the pottah, on the ground of its being invalid,—Rooknee having no authority to sign for Gunga Narain: and the pottah being otherwise informal and irregular.

The appellant appealed from that decision on the pleas that if their pottah was invalid from not having been signed by Gunga Narain, so was the plaintiff's deed of sale; and that the irregularities advanced by the principal sudder ameen were futile and not relevant; and that the plaintiff had grounded his suit on the deed of agreement, of which no notice was taken in the judgment.

The respondent contended that the lease was invalid, and, at any rate, could not last beyond the life time of the Chowdrain Rooknee, and that the deed of agreement had been proved, and the condition of it not fulfilled by the appellant.

JUDGMENT.

The Court are of opinion, that the ikrarnameh, or deed, to give security within three months, is unworthy of credit. Had it been given, possession would not have been unreservedly given before its fulfilment. It appears to have been written four days after the pottah, or lease, on the 15th September 1840, A. D., or 2d Asin 1246 B. Æ., and was not registered till 26th January 1841, or one day after the deed of sale, and two months and more after the period for giving the security had expired, strongly presumptive evidence of its having been fabricated, after the sale of the property had been made or determined upon. Further, it is morally impossible that the ijaradar, or lease-holder, would have authorized the registry after the sale; and if he had given authority to have it registered at the time the deed is dated, no reason has been brought forward to account for the delay of the registry till after the lapse of the period stipulated, and after the sale of the property.

As to the validity of the lease, the Court find it is equally valid with the sale, both having been given by Rooknee alone. Moreover Gunga Narain fully admitted the deed in the magistrate's court, and therefore his subsequent denial is of no avail. The Court therefore decree the appeal with full costs, reversing the judgment of the lower court, and dismissing the suit.

The Court do not enter into any consideration of the right set forth by the third party, Oodey Chand Malik.

THE 4TH FEBRUARY 1846.

PRESENT:

J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

PETITION NO. 725 OF SUDDER ADAWLUT.

KASHENATH AND OTHERS, APPELLANTS, (PLAINTIFFS,)

versus

MUDDUN GOPAL, PREM CHUND, AND OTHERS,
RESPONDENTS, (DEFENDANTS.)

THIS is a petition for review of judgment in a case No. 76 of 1831, decided by the provincial court of Calcutta [present J. Curtis and John Middleton] on 20th November 1832.

The review of judgment was granted by Messrs. Tucker and Reid, at the instance of Prem Chund, one of the defendants, on the ground that the decision of the provincial court in the case in question, No. 76 of 1831, special appeal, was at variance with the subsequent and final decision of the Sudder Dewanny Adawlut, in a case separate, but connected with it, No. 623, of 3rd May 1838.

On referring to the papers, we find that on the 11th July 1826, the pundit sudder ameen of Hooghly decided an original case, Kasheenath and another *versus* Mudun Gopal, Dyamoye, and Premchand Lahoree. The plaintiffs claimed 2-3rds of talooqeh Chutnan; and the sudder ameen gave a decree in their favor. In appeal before the judge of Hooghly, on the 29th July 1830, the sudder ameen's order was reversed, and the claim of Kasheenath and Govind Chunder was altogether thrown out. Again, in special appeal, No. 76, the provincial court reversed the order of the judge, and confirmed the award of the pundit sudder ameen. This is the order, to review which, permission has been granted, viz. the award of 2-3rds of talooqeh Chutnan to Kasheenath and another.

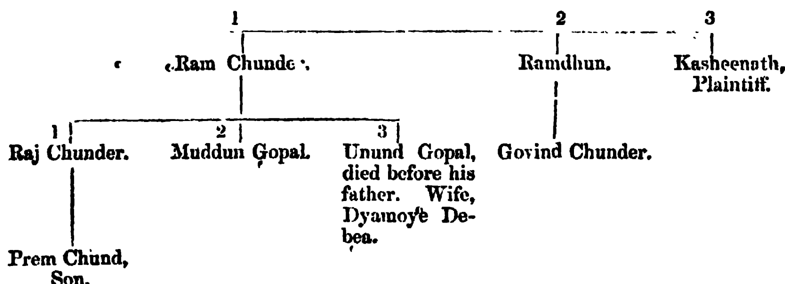
On looking over the papers of case No. 623, we find that a suit was in the first instance brought before the judge of Hooghly for half the same tolooqeh Chutnan. In that case Premchand was plaintiff, and Muddun Gopal and Dyamoye were defendants. The judge of zillah Hooghly, on the 29th of July 1830, the same day on which he passed the decision in the other case, awarded the

half of the talooqeh to the plaintiff, Premchand. In appeal before this Court, No. 623, on 3d May 1838, [present Mr. W. Money] this order of the judge was confirmed, and the award of half to Premchand was upheld, Kasheenath being allowed to sue for any rights he might have in the estate. The application for review of this order of the Court was made to Mr. W. Money, who passed the order; but rejected by him on 13th November 1838.

Another application was afterwards made for a review of the same order, but rejected by Mr. E. Lee Warner and Mr. Reid, in opposition to the opinion of Mr. Tucker. The decision of the appeal No. 623, therefore, is final, and cannot now be questioned in any manner.

JUDGMENT OF MESSRS. REID AND JACKSON.

The parties stand related to each other as below. There were three brothers, viz.



Plaintiffs have got a decree from the provincial court for 2-3rds of the estate Chutnan in case No. 76, in which a review of judgment has been allowed on the ground that that decree is at variance with a final decree of the Sudder Dewanny Adawlut No. 623, in which a review has been finally refused by the Court. The last mentioned decree No. 623, is in a case in which Prem Chund is plaintiff and Muddun Gopal and Dyamoye are defendants for half Chutnan, and in awarding the thing claimed, the judge of Hooghly, whose decision is ultimately upheld, declares that Kasheenath, the oozerdar in that case, may sue for his rights, whatever they are; it is clear therefore, that Kasheenath's rights are not affected by that decree, nor are the rights of Govind Chunder, for he was not a party to the case. The decision in case No. 76, now under review, declares that Kasheenath and Govind Chunder are entitled to 2-3rds of Chutnan. It appears to us that the two decisions are not incompatible, or in any way opposed to each other, and that they may both stand. We are not of opinion that the decision No. 76, is incorrect, on the merits of the case. The ruffanameh, which awards to Kasheenath and Ramdhun's wife six annas, Kulsa Khallee, certainly includes the whole of the patrimonial property, and gives the remainder of the

whole to the other two parties, Muddun Gopal and Prem Chund; but to that document only Muddun Gopal and Mahamoye Debea, wife of Raj Chunder, are parties. Kasheenath was not a party, and though he admits that he was allowed six annas Kulsa Khallee in a separate decision of arbitrators, we do not find any copy of that decision in the misl, and there is no proof that that arbitration referred to any thing but Kulsa Khallee. His rights in the remainder are not affected by that admission. The collector's proceeding, entering the names in the register of mutations, is not sufficient evidence of the rights of the parties. We see no reason to doubt that both estates were purchased when all the three brothers were living together. It is said by the defendants that Chutnan was purchased from private funds. Defendants' witnesses swear to this, and the other party's witnesses swear against it.

On the whole, we are of opinion that the two decisions in question, No. 76 and No. 623, are not inconsistent with each other. By decision in No. 623, the estate Chutnan is divided equally between Prem Chund on one side, and Muddun Gopal and Dyamoye on the other; and by the decision in No. 76, Kasheenath and Govind Chunder got a decree for 2-3rds of Chutnan against Prem Chund, Muddun Gopal, and Dyamoye, both the parties to case No. 623. The decisions appear not only not incompatible; but we see no reason to doubt the correctness of the decision in case No. 76, which is now under review, and consequently find no grounds for altering it. The costs of this review against Prem Chund, respondent.

Judgment of Mr. Dick.

The decision in the case in which Prem Chund was plaintiff, and which is final and incontrovertible, was decided in his favor on the ground of a deed, *ruffanameh*, given by the adverse party, acknowledging that an amicable allotment of the family estates and effects had been made, by which the plaintiffs and defendants, children of Raj Chundur, were to share, half and half, the whole of the talooq Chutnan, and Kasheenath and Ramdhun, uncles of Raj Chunder, the plaintiffs in this case, were to have 6 annas of talooq Kulsa Khallee; the truth of which was confirmed by a proceeding held by the collector of the district on a petition of Kasheenath for mutations in the Government registry on the death of Raj Chunder, at which all the parties were present and consenting.—Kasheenath appeared as a third party in Prem Chund's case. His rights were not considered, and he was referred to a suit if he had any claim to prefer to the talooq in question. In consequence, he and Ramdhun instituted this suit for 2-3rds of the talooq Chutnan, on the plea that the estates were purchased by their brother Ram Chunder, ancestor of the defendants, in the name of his sons, Raj Chunder and Muddun Gopal, conjointly with them, and they obtained a decree, for a review of which, as inconsistent with the former decree, Prem Chund applied, and it was granted.

It is true, the parties in the two suits are different; the property is however one and the same; and it is evident that the first decree, which was given on a document fully confirmed by a formal and regular proceeding of a Government officer, the collector of the district, held to make mutations in the public registry, on the petition of Kasheenath himself, and to which he was a consenting party as well as Ramdhun; by which half of the talooq was awarded to Prem Chund, has been most materially disturbed by the subsequent decree, (now under review,) which awards 2-3rds of the said talooq Chutnan to Kasheenath and Ramdhun, leaving him only 1-6th instead of half of the estate. I am therefore clearly of opinion the review was properly and correctly granted.

The decision under review, which granted 2-3rds to Kasheenath and Ramdhun, is founded on mere oral evidence, and divers village accounts, little worth credence of themselves alone. On the other hand, there is a formal regular proceeding of a public officer corroborated by the entries in his registry, which shews (to me incontestibly) that all the parties were present, and agreed, as above stated, that Kasheenath and Ramdhun should have 6 annas of Kulsa Khallee, and that talooq Chutnan should belong half and half to the children of Raj Chunder, i. e. to Prem and the other defendants in this case, and the sole parties, plaintiff and defendants, in the first case. To call in question that proceeding, the plaintiffs, Kasheenath and Ramdhun, have not produced an iota of evidence; nor have they accounted for the fact of their names being registered for only 6 annas of Kulsa Khallee, whereas if their ground of claim be good, they should have been registered as proprietors of two-thirds of that estate. I would therefore reverse this latter decision as erroneous; and thus restore in its full integrity the first decision, with which it is utterly inconsistent, and which has become final and intangible.

THE 7TH FEBRUARY 1846.

PRESENT:

J. F. M. REID,

JUDGE.

PETITION NO. 946 OF 1844.

IN the matter of the petition of Bhog Narayn, and others, filed in this Court on the 20th November 1844, praying for the admission of a special appeal from the decision of A. Smelt, judge of Patna, under date the 2d August 1844, confirming that of Mirza Mahomed Suddeek, sudder ameen of Patna, under date 9th January 1844, in the case of Sohurf Lal, representative of Teekum Lal, plaintiff, *versus* Bhog Narayn and others, defendants.

It is hereby certified that the said application is granted on the following grounds:

Teekum Lal (who afterwards sold his interest in the bond to Sohun Lal) sued Bhog Narayn, Gopal Narayn, Heyt Narain, Wuzeer Mull, Gudadhur Pershad, Doorga Pershad, and Kalee Churn, to recover Co.'s rupees. 960, principal and interest, on a bond executed by Bhog Narayn, for himself and the other defendants, who, plaintiff alleged, were minors. The defendants, denying that the bond was ever executed, alleged that, with the exception of Wuzeer Mull and Kalee Churn, they had all attained their majority when the bond was said to have been written; therefore had Bhog Narayn signed for the other defendants, his act did not bind them.

The sudder ameen has not gone into this plea at all. He merely recited that the execution of the bond is proved, and decrees for the plaintiff. The judge confirms the decision.

I am of opinion that the sudder ameen ought to have enquired into the defendant's plea, and have required proof that the defendants, except Bhog Narayn, were minors, and that that person was duly authorized to sign for them as legal guardian; or, if any of them were not minors, that he had due authority from them to sign for them. Holding the enquiry of the sudder ameen to be incomplete, I admit the appeal, and, quashing the decisions of the lower courts, direct the case be restored to its place on the file of original suits, and retried on the points indicated. The usual order will issue for the return of the stampt paper on which the petition of appeal and application of special appeal are written.

THE 7TH FEBRUARY 1846.

PRESENT:

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 269 OF 1844.

Regular Appeal from the decision of the Principal Sudder Ameen of Rungpore.

ISSURCHUNDER SERMA, APPELLANT, (DEFENDANT,)

versus

BEEMOOLLA DEBBEA, RESPONDENT, (PLAINTIFF.)

Claim to reverse a farm and obtain possession of 8 annas Kismut Hurreedebpore, &c. and wasilat.

THIS claim has been brought forward by the plaintiff against the defendant, on the ground that one of the defendants, Issurchunder,

who is proprietor of the remaining half share of the estate in question, has given a farm of the whole estate, without any authority or permission on her part. The other defendants, besides Issurchunder, are the farmers, who have been in possession.

The defendants plead that the lease was given by the plaintiff as well as by Issurchunder, and that the rent of the half share was also paid her, or at least offered.

On the 22d August 1844, the principal sudder ameen decreed in favor of the plaintiff, with wasilat against the farmers and Issurchunder.

On the 20th November 1844, Issurchunder appealed from this award.

The case was referred by Mr. Jackson to a full Court, and on the 4th February 1846 the Court delivered the following opinion.

Opinion of Messrs. J. F. M. Reid, A. Dick, and W. B. Jackson.

" In this case, appellant states that in filing a reply to the answer of the defendant, Hurrinath, more than six weeks was allowed to elapse. Hurrinath's answer was filed 22d December 1843, and the reply of plaintiff was filed on the 7th February 1844, three days too late.

" The respondent states that three documents were filed in the meantime, viz. on the 8th January 1844; so that it was not owing to neglect of the case that the reply was not filed ; and there seems to be some truth in this, for the case was complete as regarded other defendants, and in fact there was no necessity whatever that a reply should be filed, for this defendant admitted the truth of plaintiff's statement. Still, if a reply is imperatively necessary in all instances, the rule has been broken through ; and Circular Order No. 36, 2d July 1845, distinctly applies Act XXIX. 1841, to such cases.

" The Court are of opinion that as the case was proceeding with regard to other defendants, there was no neglect shewn such as to bring the case within the rule laid down in Act XXIX. 1841.

" The case to be brought forward again before Mr. Jackson."

The case accordingly came to-day before Mr. Jackson, who recorded his judgment as below.

Opinion of Mr. Jackson.

The right of the plaintiff to eight annas in the estate is not questioned, nor is it questioned that the farmers have been in possession during the time for which the plaintiff claims wasilat. It is incumbent on the farmers to prove their receiving the farm from plaintiff for her eight annas share; but no lease is produced. It is stated

there was a lease; but as it bore no stamp, it could not be admitted as evidence. The farmers had therefore no authority to collect from the plaintiff's share, it remains only to prove that Issurchunder received the rents for both shares; and when it is considered that the farmers are proved, by the witnesses on both sides, to be one his relation and the other two his principal servants, the probability is that the farm was a mere cloak for his own collections from the whole estate. No receipts of plaintiff for the proceeds of the estate are filed; it is therefore certain that she did not receive any thing; and her witnesses prove that the whole of the rents were in some instances paid to Issurchunder.

On the whole, I am quite satisfied that the claim of plaintiff is good against the four persons, cast in the principal sudder ameen's decree.

Ordered therefore, that the decree of the principal sudder ameen of 22d August 1844, be confirmed. Costs of this Court against the appellant, Issurchunder.

THE 10TH FEBRUARY 1846.

PRESENT:

A. DICK,

JUDGE.

CASE No. 23 OF 1843.

Special Appeal from the decision of the Judge of Zillah Beerbhoom.

BRIJ MOHUN SEIN, NITEEANUND SEIN, AND OTHERS, (DEFENDANTS,) APPELLANTS,

versus

SEIUD HOOSAIN, OROOF BABOO MEEAN, AND SHAH ABOOL FUZL, (PLAINTIFFS,) RESPONDENTS.

Pleaders—Pursun Koomar Tagore and Lootf Urruhmon for Appellants; and Ghoolam Sufdur for Respondents.

SUIT laid at rupees 1,577-0-0, for share of ancestral monthly allowance.

The plaintiff, Seiud Hoosain, stated that the allowance in question belonged to Fuzl Hoosain, and was inherited from him, by his father's mother, Hyzura Beebee, and his father's brothers, Hyder Hoosain, and Bukhshish Hoosain, plaintiff's father; that his father died in 1239, and he was ousted of his right in 1231, and from minority could not sue before. Finally, that he had sold half his right to Shah Abool Fuzl, the other plaintiff.

The defendant answered, that the suit was untenable from lapse of time; that the plea of minority was false; that the case must be nonsuited, as there were two separate claims advanced in one plaint; that the claim of Abool Fuzl was not tenable against him; and that he had purchased from Hyzura Beebee and Hyder Hoosain the whole of the allowance; the mother of plaintiff being present, and that the plaintiff, Seiud Hoosain, had no right to inherit, as his father had died before Fuzl Hoosain.

The principal sudder ameen, having ascertained, on reference to a petition filed by the mother of plaintiff, Seiud Hoosain, that plaintiff's father died after Fuzl Hoosain, and that the plea of minority was good, decreed the claim.

The judge, for the same reasons, affirmed his decision in appeal.

A special appeal was granted on the ground of champerty. Abool Fuzl, in consequence, withdrew his claim.

JUDGMENT.

Abool Fuzl having withdrawn his claim, I am obliged to admit the withdrawal under the practice of the Court. The respondent has clearly shewn the truth of his plea of minority; and his right of inheritance is clear, his father having lived subsequent to Fuzl Hoosain. His claim is therefore indubitable, and consequently the decisions of the lower courts, founded on the Mahomedan law, is confirmed.

THE 10TH FEBRUARY 1846.

PRESENT:

A. DICK,

JUDGE.

CASE No. 221 OF 1843.

Regular Appeal from the decision of the Principal Sudder Ameen of Zillah Nuddeah.

BIDEIA SOONDREE DASEEAH, WIDOW OF HUREE NARAIN NUNDEE, (PLAINTIFF,) APPELLANT,

versus

BUHKUT MAYEE DASEEAH, WIDOW OF SHEEOO CHUNDUR PAUL CHOWDREE, (DEFENDANT,) RESPONDENT.

SUIT for the recovery of 10,400 Company's rupees, debt on a bond, principal and interest.

The plaintiff stated that the ancestor of defendant, Budeenath Paul Chowdree, borrowed the sum of 5,000 rupees from his ances-

tor, Bunsha Ram Nundee, and gave a bond, filed; and paid only 250 rupees interest. The payment of the rest was delayed from day to day, until nearly twelve years had elapsed, which induced this suit.

The defendant replied, that no money had ever been paid or received; that the bond was given as a deposit in the hands of the plaintiff's ancestor, and made out in his name: but its liquidation was dependent on a pending family arrangement between his ancestor, Budeenath Paul Chowdree, and his relative, Nilcomul Paul Chowdree, who had a suit in the Supreme Court. The arrangement having failed, the bond became null and void, and was required back. Bunsha Ram, being unable to find the deed, executed a composition deed of release, binding himself and heirs, &c., not to make any demand on the bond, should it ever be found.

The principal sudder ameen dismissed the claim;—1st, because when Budeenath Paul Chowdree died, and his heirs were minors, a list of his debts was filed in Court and this not mentioned; 2ndly, because he disbelieved the witnesses (3) to the bond, who had testified that it was a money transaction, two of whom had evidently been added subsequently to the execution of the deed, from their names being written at the very bottom, and the ink of totally a different shade; 3rdly, because both the parties lived several years after the date of the bond, and no evidence of any claim having been made, and the payment of 250 rupees interest most improbable, and not proved; and, 4thly, because the composition deed of release was clearly proved.

In this Court, the appellant's pleader contended that the deed of release was really an ikrarnameh, or deed of agreement; and should therefore have been written on stamp paper of 32 rupees.

On the other hand, the respondent's pleader agreed that it was in fact a receipt, and 2 rupees and 8 annas of stamp was sufficient.

JUDGMENT.

The Court, on perusal of the deed, considered it to belong more properly to the head "composition deeds," and, evidently was so understood by the parties, and the attorney in whose office it was drawn and signed, being on stamp of 8 rupees, as required for deeds of that description.

Concurring with the principal sudder ameen in his reasoning, the Court confirm his decision, and dismiss the appeal with full costs.

THE 11TH FEBRUARY 1846.

PRESENT:

J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 77 OF 1843.

Special Appeal from the decision of the Judge of Zillah Tipperah.

RAM KANT SEIN, THEN HIS WIDOW, SHEEOO SOONDREE, AND OTHERS, APPELLANTS, (DEFENDANTS,)

versus

RAJ KISHWUR RAEE, RESPONDENT, (PLAINTIFF.)

Pleaders Pursun Koomar Tagore and Awuz Alee for Appellants; and Mr. Skinner and Ubas Alee for Respondent.

SUIT, laid at Company's rupees 2171-7-6, for possession of lands in Mudhere chur.

It appeared that the plaintiffs in this suit had formerly sued the present defendants for this same property, and their claim was dismissed by the zillah judge, and his decision confirmed in appeal by the provincial court. A petition for review was subsequently presented by the plaintiffs and refused. Thus the decision became final in every respect. The provincial court, however, deeming the chur in question to belong to Government, had referred the subject to the revenue authorities, directing that the settlement for it be made with the appellants. The plaintiffs had sued another party, the proprietors of Monabad, for the other half of the chur, at the same time; and the final decision in that case was precisely similar to the one in favor of the appellants, proprietors of Raeepore. Nonabad is in the collectorate of Mymensing, and Raeepore in that of Tipperah. The portion adjudged in possession of the proprietors of Nonabad, was let in farm to them, though the collector recorded his opinion that the chur belonged to the proprietor of Bamun chur, the present respondent. In consequence he sued the collector and the proprietors of Nonabad for the portion of the chur let in farm, and obtained a decree in the provincial court; the judge being of opinion that the former decision, dismissing the claim of the proprietor of Bamun chur, did not affect his present claim.

The decision of the provincial court was confirmed in appeal by the Sudder Court. Afterwards the case for the other half of the chur, adjudged to the proprietors of Raeepore, was investigated by the deputy collector, who, in accordance with the latter decisions of the courts, declared this portion also of the chur to belong to the proprietor of Bamun chur, and withdrew the claim of Government to it. The proprietor of Raeepore appealed to the special commissioner, who virtually confirmed the decision of the deputy collector.

Upon this, the proprietors of Bamun chur, the respondent, sued the proprietors of Raeepore, the appellant, for possession, and obtained a decree from the principal sudder ameen, and, in appeal, from the judge, in virtue of the decision given ultimately against the proprietors of Nonabad.

In this special appeal, it was contended in the first place by the appellants, that a final decree having been given in a case in which the parties were the same and the property in dispute the same, the respondent's suit was illegal and inadmissible. On the other hand, the respondent contended that the provincial court and Sudder Court having decided, in the parallel case of Nonabad, that the former decision could not affect the respondent's claim, the Court could not now declare that it did preclude it.

JUDGMENT.

The Court find that the two cases are not precisely similar. Another party, the Government, were introduced in the Nonabad suit, as the collector had farmed the land to the Nonabad proprietors, though he declared neither they nor Government had any right to it. In this case, Government have merely withdrawn all claim to the land in question, though the revenue authorities have declared the land to belong to Bamun chur. The dispute therefore continues as before simply between the proprietors of Raeepore and Bamun chur, the appellants and respondent. The Court are of opinion, that the parties being the same, and the property in dispute the same, as in the suit No. 4,299, finally decreed by the provincial court of Dacca, on 16th June 1819, the present suit cannot be heard. They therefore decree the special appeal, reversing the decisions of the lower courts in favor of respondent, with full costs.

THE 11TH FEBRUARY 1846.

PRESENT:

J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 150 OF 1841.

Special Appeal from a decision of the Judge of Dinagepore.

MUSST. WUZERUN, APPELLANT, (PLAINTIFF,)

versus

RUGOBIND RAI AND BINDRABUND RAI, HEIRS OF JYDOORGA CHOWDRAIN, RESPONDENT, (DEFENDANT.)

CLAIM rupees 2,301 on account of the purchase money of one and half annas of Jote Moheeoodeenpore, paid to Jydoorga by plaintiff,—rupees 1,718-13, interest on the same.

The plaintiff sued in zillah Dinagepore, for rupees 4,019-13, as above, principal and interest of money paid to Jydoorga, deceased, for the one and half annas of the estate, of which plaintiff has not obtained possession. She now sues for the return of the money; because she understands that Jydoorga was not empowered to sell the estate. It appears that the deceased Jydoorga sued for possession of the whole estate, and, on the 5th August 1828, obtained a decree for the two annas and thirteen gundahs, with a reservation that she was only to possess a life interest, without authority to sell any portion of it, or make any transfer of such portion; the remainder of her claim being dismissed, she had to pay costs on the portion of her claim dismissed. It appears that she wanted the money partly for the purpose of paying these costs, and partly for her own use, and sold the share for the purpose of obtaining it. The present defendants succeeded to the two annas, 13 gundahs, so obtained by Jydoorga, and are her heirs.

On the 31st July 1839, the principal sudder ameen decreed the principal, with interest from the date on which the plaint was filed.

On the 14th July 1840, the judge of Dinagepore, in appeal, reversed this order and dismissed the claim.

On the 23d January 1841, a special appeal, on part of plaintiff, was admitted in the Sudder Dewanny Adawlut.

On the 2d December 1842, the case was heard before Mr. R. Barlow, who recorded his opinion that Jydoorga was under the necessity of selling the estate for the purpose of paying the costs and other demands against her, and that she was justified in doing so by the exigency of the circumstances: he proposed therefore to decree the claim for the money in part, with interest from the date of the kawaleh.

On the 21st April 1843, Mr. J. F. M. Reid took up the case and declared the claim, in his opinion, inadmissible. Jydoorga had only a life interest, and was not empowered to sell or transfer the property, nor was there any cogent necessity to force her to sell. He, on those grounds, proposed to dismiss the claim altogether.

Opinion.

The Court are of opinion that the necessity of borrowing money on the part of Jydoorga, is made out only as far as the costs of the former case, 927 rupees, and the sum borrowed of Ramkulun Sing, 675 rupees, in all 1,602 rupees. The remainder [rupees 699] of the sum sued for, 2,301, is said by witnesses to have been expended in paying her husband's debt; but the amount of these debts is not established, nor is the fact sufficiently proved. It appears to us, therefore, that Jydoorga borrowed a larger sum than was required; the sale is therefore invalid, and the purchase money becomes a debt due from Jydoorga; but we consider the claim of plaintiff to be good against the defendants only for a portion of that debt, viz. 1,602 rupees, or that portion of the debt incurred by Jydoorga under necessity, for the benefit of the estate and for her own maintenance; and we decree accordingly for 1,602 rupees, with interest from the date of the kawaleh, viz. 26th Phagoon 1237, which is also apparently the date of borrowing the money from the present plaintiff. On further consideration Mr. Reid concurs in this order. The costs of the proportion decreed in favor of plaintiff, against the defendant.

THE 17TH FEBRUARY 1846.

PRESENT:

C. TUCKER,

JUDGE.

PETITION NO. 993 OF 1844.

IN the matter of the petition of Mr. Henry Newcomen, filed in this Court on the 23d November 1844, praying for the admission of a special appeal from the decision of Abdool Wahid Khan, principal sudder ameen of zillah Moorshedabad, under date the 29th August 1844, modifying that of Sheeb Chunder Mookurjee, acting sudder ameen of the same zillah, under date 29th December 1843, in the case of petitioner, plaintiff, *versus* Gopal Chund and Gopal Kishen Mookurjee &c., defendants.

It is hereby certified that the said application is granted on the following grounds.

The petitioner stated that he had employed the defendant Gopal Chund as a gomashta, on the security of the other defendant Gopal Kishen Mookerjee. That Gopal Chund embezzled the sum of rupees 493-13, and gave an ikrar to pay the amount in fifteen days; but, failing to do so, he instituted a suit against him and his surety Gopal Kisken Mookerjee. The acting sudder ameen gave a decree for plaintiff—Gopal Kishen Mookerjee appealed, denying the execution of the security bond. The principal sudder ameen exonerated him; but it is not clear on what grounds. He states as follows: This suit is brought for the recovery of a sum of money due on an ikrar executed by Gopal Chund. Now Gopal Kishen Mookerjee was not security for the fulfilment of such ikrar on the part of Gopal Chund. Moreover, Gopal Kishen states that, on the date which the security bond bears, he was at Rampoora, (the security bond purporting to have been executed at the plaintiff's kotee Pateekabaree,) and his witnesses corroborate this his statement. Hence, it is not clear whether the principal sudder ameen exonerates Gopal Kisken Mookerjee on the ground that he never executed any security bond at all; or whether, admitting the execution of the security bond, he did not deem it applicable to the plaintiff's demand.

The case is therefore returned to the principal sudder ameen, who will re-admit it on his file, and, after such further enquiries as he may deem requisite, will record distinctly and explicitly the grounds of his decision.

THE 17TH FEBRUARY 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE NO. 75 OF 1845.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Tirhoot, Niamut Ali Khan, December 28th, 1844.

MEHUR CHUND RAEE, GRANDFATHER AND GUARDIAN OF AJOODHEEA RAEE, APPELLANT, (DEFENDANT,)

(SHEIKH WULAIT ALI, SHEIKH WAHID ALI, MUSST. BIBI MORADUN, MUSST. NAOO BIBI, HEIRS OF SHEIKH MOHUMMUD ALI AND SUJAIT ALI, AND DEFENDANTS, BUT DO NOT APPEAL,)

versus

MUSST. SOORJA KOWUR, WIDOW OF BABOO OODA SINGH, DECEASED, RESPONDENT, PLAINTIFF,

This suit was instituted by respondent, on the 12th of August 1842, to recover from the defendants the sum of Company's rupees 9,192, advanced on a lease of mouzahs Shabazpore and others; which lease was not enjoyed by respondent, and which advance was consequently never satisfied.

The decree appealed from is in substance as follows:

'These lands were first leased to Baboo Ooda Singh, by Mohummud Ali and Sujait Ali, on an advance by the former of rupees 5,500. After this they (Mohummud Ali and Sujait Ali) received a further advance of 375 rupees, and executed a pottah for the lands, at a rent of 25 rupees per annum, and gave over possession. The pottah is dated Assin 16, 1244, Fuslee, and acknowledges the advance of rupees 5,875. In consequence of the attachment of the lands, under Regulation II. of 1819, Ooda Singh was ousted, and the advance made has never been satisfied. This is proved; but defendants deny both the receipt of what is stated to have been advanced, and the execution of any pottah whatever: the whole is a fraud and forgery, they say. After the attachment and a new settlement by Government with the other defendants, Mehur Chund Raee (the appellant) purchased the property from them; and pleads, as they do, that the pottah is a forgery. The plaintiff (respondent) has established her claim by the production of documents and the parol evidence of witnesses cognisant of the facts (a full detail of which is given): a decree is therefore passed for the amount sued for, payable by the heirs of Mahummud Ali and Sujait Ali: if not satisfied by them, the lands to be sold in execution of the judgment.'

The petition of appeal is the echo of the answer to the plaint; and there was not, and is not, a single document or witness in support of either; while the claim of respondent is proved by all the usual deeds and proceedings usually connected with such transactions, and the corroborating testimony of no less than ten witnesses.

I affirm the decree appealed from, on the grounds on which it was passed by the lower court; with costs payable by the appellant.

THE 23D FEBRUARY 1846.

PRESENT:

W. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 47 1840.

Special Appeal from the decision of the Judge of Midnapore.

GOLUKCHUNDER, APPELLANT, (DEFENDANT,)

versus

KEWULNURAIN PUNTHEE, DECEASED, CHUNDRA DEBBEA, AND MUDOOSOODUN PAL, (PLAINTIFFS) RESPONDENTS.

Claim Rupees 1,297-11-0 *on account of deposit.*

THE plaintiff, it appears from the papers of the case, had money deposited in the hands of Golukchunder, a mahajun. From this deposit the Government revenue of plaintiff's estate was to be paid into the collector's treasury. In the defendant, Golukchunder's account several items appear of sums paid as revenue, which do not appear as so paid in the collector's accounts. The claim is brought for the amount of these sums, against the appellant Golukchunder, as well as against Junardhun, the moktar or agent, through whom the payments are said to have been made, and against Punchanund Potedar and Muttromohun Pal, who are stated also to have been employed in the payments.

The defendants assert that the money was paid into the collectorate, and Golukchunder, the appellant, more particularly lays stress on the fact that it was not his business to take the dakhilehs but that of the moktar Junardhun.

On the 22d August 1837, the principal sudder ameen gave a decree against Junardhun moktar and Punchanund Potedar only, exempting the other defendant.

In appeal, the judge of zillah Midnapore, on the 7th March 1839, decreed against Golukchunder alone, and not against the other defendant included in the principal sudder ameen's decree.

A special appeal in this Court was admitted by Mr. C. Tucker, under date the 28th December 1829, before the issue of Act III. 1843. The case therefore is to be tried on its general merits, not merely on the recorded grounds of admission of special appeal.

On the 4th October 1841, Mr. Abercromby Dick recorded his opinion, that it is incumbent on plaintiff in this case to prove that the money claimed was not paid into the collectorate as stated in the *hat chitta*, and that he consequently has had to pay the revenue twice over. Junardhun, mookhtar, stated that he paid 2500 rupees on account of revenue in 1242; the plaintiff files no proof that Golukchunder had authority to pay revenue into the collectorate on his account;—Golukchunder, however, admits he was responsible for the money until it was tested in the collectorate, and should have proved that it was paid and tested, which he has failed to do; on these grounds he would dismiss the claim, with costs against each party; reserving to plaintiff the permission to sue Golukchunder and Junardhun again.

On the 20th January 1842, Mr. J. Shaw recorded his opinion to the following effect. From the collector's proceeding of 9th December 1835, it is sufficiently plain that the money sued for was never paid into the collectorate as asserted by the defendants: the defendant Junardhun had a general power of attorney (moktarnameh) from the plaintiff, to look after his case in the collectorate, and to receive the money and pay it in: he received the money from Golukchunder and paid it into the treasury. From the deposition of Junardhun before the magistrate, it appears that the money in question was sent to the collectorate and tested, and it is probable this Junardhun with Muttromohun Pal, a servant of Golukchunder, and Punchanund Dutt Potedar, have appropriated the money. It is proved that Muttromohun with Junardhun took the money to the collectorate; and unless these two persons and Punchanund can produce dakhilehs, they are answerable for the amount. Mr. Shaw proposed on these grounds to give a decree against Junardhun, Punchanund, and Muttromohun Pal.

The case came on before me this day. I concur in the judgment proposed by Mr. Shaw. There is no doubt that the plaintiff is entitled to receive the sum claimed, which has been charged against him as revenue paid, whereas it was not so paid; the absence of dakhilehs is sufficient proof of the non-payment; it remains only to determine from whom he is entitled to receive it; the money was actually sent by Golukchunder, but he had no authority to pay in the revenue, this authority was given to Junardhun distinctly; Golukchunder was authorized to supply Junardhun with the money required to pay the plaintiff's revenue; and the money is traced as far as Junardhun's hands; I do not therefore think Golukchunder liable. The decree to issue in the name of Mr. Shaw and myself.

THE 27TH FEBRUARY 1846.
PRESENT:
R. H. RATTRAY,
JUDGE.

CASE No. 50 OF 1845.

Regular Appeal from a decision of the Judge of Tirhoot, David Pringle—passed December 31st 1844.

MUHA RAJAH KO'WUR BASDEO SING'H, APPELLANT, (PLAINTIFF,)

versus

MUHA RAJAH KO'WUR ROODUR SING'H BUHADUR, RESPONDENT, (DEFENDANT.)

THIS suit was instituted by appellant on the 22nd September 1840, to recover from respondent a moiety of the ancestrel property, real and personal, of the late Muha Rajah Chuhtur Singh: the estimated value stated at Company's Rupees 24,46,958-1-13-2½.

The annexed genealogical table, introduced here to facilitate a ready comprehension of what immediately follows, exhibits the relative position of the parties towards each other, and those members of the family, whether living or deceased, whose names appear on the proceedings.

The decision appealed from, including a general exposition of the case before the courts, is to the following purport, generally in the words of the deciding judge:

There is first to be determined (the judge observes) by what law in this case the succession is to be governed. The plaintiff (appellant) says by the Hindoo Law; the defendant (respondent) by that of *Koolachar*, or Family Usage. Next, whether a certain Deed, purporting to be that of Rajah Chuhtur Sing'h, was really his act; and, if so, whether good for the succession, as therein provided for, under the law that may be held applicable thereto.

The plaintiff asserts his claim to succeed under the Hindoo Law, on the ground, first, that such has hitherto regulated the succession in this zemindaree; and, secondly, that no Family Usage, justifying a deviation from it, can be shewn ever to have existed.

In support of the first, he urges, that the property has descended by inheritance, in regular succession, from Pirtab Sing'h, who adopted Madho Sing'h; who, with the knowledge and consent of his four sons, having made a partition of the estates, in which the largest share was obtained by Chuhtur Sing'h, father of plaintiff and defendant, went to Benares and there died; that this partition has been upheld by the Provincial Court, in its judgment in the

suit of 'Keerut Sing *versus* Chuhtur Singh;' that in Madho Singh's Deed, under which it took place, there is no mention of *Koolachar*, or Family Usage, as the authority for such disposition of the property; while the *Bywusteh*, given in the aforesaid suit, distinctly states, that occupancy was to be taken as consent—on which ground the claim of Keerut Sing'h was dismissed.

As respects the Family Usage, it is alleged, that Madho Sing'h, their grandfather, was the son of Eknath Thakur, who was no Rajah,—which title Pirtab Sing'h only acquired on his adoption; that Ragho Sing'h's title, if he had it, only descended to his sons, and thus the chain was broken; while *Koolachar* demands, that one son should be preferred, in the same line, in unbroken succession, and not for one or two generations, only; that Baboo Ram Sing'h inherited with Nuripdur Sing'h, and likewise enjoyed the title of Rajah, as the admission of his sunnud for lakhiraj lands, by Madho Sing'h and eventually by the authorities, establishes; and that, by the *Shasters*, no father can make an unequal division of his property amongst his sons, such being *ipso facto* invalid.

The defendant, in answer, rests his claim to retain the whole, on *Koolachar*, or Family Usage; alleging, that the Raj and domain appertaining thereto, have never been separated, but have devolved entire, on every succession, for fourteen generations, and that such custom is still in force; that this has been maintained for some generations past through a Deed of Settlement, under which the *Raj* and Estates have, on each occasion, been conveyed to the eldest son, suitable provision being made for the younger branches; that this is in strict accordance with the Mithila *Shasters*, in force in Tirhoot, as applicable to *Koolachar*, *Desachar*, and *Rajachar*, or Family, Local, and Regal Usage; that in case of there not being any son, it will devolve on the next brother and his descendants in right line, according to primogeniture; that Chuhtur Sing'h thus acquired the whole by a Deed executed by Madho Sing'h, certain pergunnahs, as stipulated, being assigned to the three younger brothers; that, in like manner, Chuhtur Sing'h, when going to Benares, conferred the whole on defendant, a pergunnah being assigned for the maintenance of plaintiff, and notification duly made to the authorities; that the Government revenue of pergunnahs so assigned, was always paid through the eldest son, the parties holding them enjoying the profits; that Keerut Sing'h, with a view to subvert this custom, sued his brother Chuhtur Sing'h, but his suit was dismissed; that plaintiff has not stated why Madho Sing'h did not share equally with Pirtab Sing'h during his life-time, nor accounted for Bishun Sing'h's succeeding his father Ragho Sing'h, notwithstanding that the latter had five brothers; that the *Raj* and Estates have descended from Muhesh Thakur; that the assumption of the title of Rajah by Baboo Ram Sing'h would no more prove him entitled to it, than the same attempt by Keerut

Sing'h; that Section 5, Regulation XI. 1793, is no bar to *Koolachar;* and, that the Deed of Chuhtur Sing'h was made to give possession to defendant, while he yet survived.

The documentary evidence on the part of the plaintiff, consists for the most part, of the proceedings and instruments referred to in his plaint; namely, copies of the Deed of Madho Sing'h; of that of Chuhtur Sing'h, now contested; of the application of defendant to the authorities; of his own objections lodged at the time; of a solitary sunnud given by Ram. Sing'h, and the proceedings of the Revenue Authorities upholding the grant made by it, by a release of the villages included in it. A genealogical table is added, from the time of Pirtab Sing'h; precedents are cited; and, lastly, parol evidence is furnished, to prove the physical incapacity of Chuhtur Sing'h, at the time the Deed, asserted to be his, is stated to have been executed.

On the part of defendant are, documents to shew that Keerut Sing'h, in the genealogical table exhibited in his suit, did not style Baboo Ram Sing'h, Rajah; a letter from the Collector, and Government's reply, shewing such title to have been refused to Keerut Sing'h; the grant of a *Khilut* to defendant on his marriage; the reply of Madho Sing'h in a suit referring to his ancestor Mehnet Thakur, and to the Family rule of succession for a hundred and sixteen years prior to his own time; a perwanna of the Council of Patna, in which certain lands are adjudged to be rent-free on the ground of a sunnud produced in the name of Nirput Thakur, proving the same to have been a grant of the Nazims in 1103 Fuslee, and to have been held successively by Ragho Sing'h, Bishun Sing'h, Nurindur Sing'h, and Pirtab Sing'h; the authority of Government for conferring the title of *Buhadur* on defendant; proceedings of the Revenue Authorities on the record of defendant's name, and other proceedings of a previous date, refusing compliance with the application of Keerut Sing'h and Govind Sing'h that their names might be separately registered. Precedents are added, in support of a recognition of *Koolachar*; and, lastly, parol evidence to the circumstances attending the execution and issue of the Deed of Chuhtur Sing'h, and the existence of the Family Usage.

The above is a succinct account of the pleadings and evidence adduced in their support, as recorded in the final proceeding of the lower court; the judge of which now proceeds, with reference to them, to consider the law which should regulate this succession, directly and contingently: the former, supposing the Deed (of Chuhtur Sing'h) authentic; the latter, if it be pronounced otherwise.

In my judgment (he says) the plaintiff has entirely failed to make good his claim to inherit under the Hindoo Law; and that for the following reasons:

The Deed of Madho Sing'h, on which it mainly, I might say, entirely rests, can only be construed as the act of one who holds at his own free will and disposal, that which he thus bestows. It runs thus: " Maharaj Madho Sing'h Buhadur, to Muharaj Chuhtur Sing'h, Greeting: Whereas, I am now frequently attacked by illness, and am about to proceed to Benares for holy purposes. I hereby bestow the *Raj*, Zemindaree, and Property in Sircar Tirhoot, with all my earthly possessions in money. and kind, Elephants, Horses, and the like, on you; all of which you will hold and possess; likewise whatever profits remain after payment of Government revenue, all sums realized as Malikana of separate villages, customs of zumeendaree, or from lands held by others, Nankar lands, and those appertaining to Lakhiraj lands, with all rights of zemindaree attached to Nizamut Muhals. Jagheers, and Altumgah, in the pergunnahs of Sircar Tirhoot aforesaid. You will pay my just debts as herein mentioned, and receive what is due to my estate, of which I have accordingly given notice to the several authorities. To the Muharaj Ko'wur Baboo Keerut Sing'h I have assigned pergunnah Jubdoe, and to the two others, pergunnahs as specified; as a suitable maintenance; adding two Horses and an Elephant to each, who will enjoy all profits of the same, and pay to you the Government revenue, which you will pay into the Treasury with that of the Estate. You will shew all courtesy to each other; and they will pay you that respect due to the *Rajneet.* Dated Jeyt, Soodee 13th 1214."

Nor does the cases of 'Keerut Sing'h *versus* Chuhtur Sing'h' affect this opinion; as said in my judgment just pronounced in the case of Gunneish Dutt Sing'h. It was there admitted and held good, *pro tanto,* to set aside the claim asserted, to hold by any other Deed, the plaintiff declaring, as in this case, that it was a forgery. It is alleged, that there is here no mention of *Koolachar;* but could the instrument itself be interpreted otherwise than as giving effect to such rule? There is, we have seen, a specific injunction to show the respect due to the *Rajneet.* But, assuming the Deed to be one of partition, how can such unequal division be made to consist with the Hindoo Law, on which it is said to be founded? It cannot be shewn that the name of a single individual has ever been recorded in the collector's register as a coparcener in this zemindaree; while it is proved by exhibits of the defendant, that the applications of Keerut Sing'h and Govind Sing'h, holding under this very Deed, to have their names enrolled, were rejected. Nor can it be shewn that Madho Sing'h inherited along with his brother Pirtab Sing'h; a supposition barred by the plaintiff's own admission of his adoption by him. In a solitary instance it is endeavoured to be proved, by the exhibit of a sunnud of Ram Sing'h's on which certain lands were held to be entitled to release, that he (Ram Sing'h) shared with Nurindur Sing'h; but this, it

will be seen, was because of those lands being so held previous to the Company's Rule, a prescriptive title of itself sufficient to maintain the party in possession: but give it all the weight claimed for it, and it stands but an isolated fact to establish the operation of a law, said to have been in force in the family, for centuries.

The plaintiff would date the origin of the family and the acquisition of the estates from the time of Nirput Thakur; but his witnesses plead ignorance of any one beyond Ragho Sing'h, the existence of whose five brothers they yet admit.

It would be superfluous to enter more particularly into their evidence on this head; it being in reality conclusive as to the immemorial existence of *Koolachar*, as regulating the succession in the family without any reference to that furnished by defendant in support of it; of which (last) I need only instance the Deeds of Settlement, as produced, from Nirput Sing'h downwards, seven in number, supported as they are by the fact of possession in accordance with them, as abundantly established, and the uniform simultaneous enjoyment of the Title,—the remarkable purwannah above alluded to in the exhibits, emanating from the Council at Patna,—with other documentary proof. As I consider the plaintiff has made out no case whatever to inherit by Hindoo Law, I need not here further notice the evidence in support of defendant's cause.

I now, (the Judge continues) proceed to consider the second point, the authenticity of the Deed of Chuhtur Sing'h. It has been shewn that according to the Family Rule, if the Deed be authentic, it is good to establish the succession, and for all purposes declared in it; and though according to Hindoo Law, a writing is said to be merely used *in memoriam rei*, and a written instrument not to be essential to the validity of any distribution of property, yet, under the provisions of Regulation XI. of 1793, the absence of such writing would in this case be fatal to the defendant's plea.

The plaintiff alleges, that for a period of twelve days and upwards previous to his death, Chuhtur Sing'h was in a state of bodily and mental incapacity. To establish this, there is brought the testimony of four witnesses, who state as asserted, to the letter; while they are compelled to admit, that though his state was hopeless from the first, no steps were taken for his removal to the Ganges till *in articulo mortis*, the *baladummee*, or rattle in the throat, having commenced. They further admit, that guilt was unquestionably incurred by his sons, who were throughout present, by the omission to take such steps sooner.

Without entering into the features of the disease, or rather complication of disorders, thus stated to have terminated his existence—on which, in my opinion, medical evidence would have been important—it is, I consider, incredible, that for so long a period, the deceased should have been allowed to remain in this state without

being conveyed to the Ganges. The conclusion is, that the witnesses are undeserving of credit; and consequently no such mental or bodily incapacity is established, as would, on *that* ground, warrant the rejection of this Deed. The petition of the plaintiff to the collector on the 8th April, four days after Chuhtur Sing'h's demise, contradicts it. In it, he states, that on the 4th Chuhtur Sing'h's illness had terminated fatally, as they were proceeding with him to the Ganges; which they had been obliged to do so hurriedly, as merely to be able to prepare an awning for the cot on which he lay, suspending it in the manner of a *dhoolie*. But, if for twelve days before in a dying state, whence arose the necessity for such unbecoming haste, in the case of an individual of the rank of Chuhtur Sing'h?

Nor, on the other hand, do I credit the statement made by the witnesses of the defendant, in regard to the circumstance of the deceased, at the time, suffering under no malady whatever; as contradicted by the Deed itself, which expressly declares, that, entertaining no hope of recovery, he is about to set out for Benares. That the Deed was drawn up in a hurry, on a stamp of insufficient value, and not in sufficient time to be registered while Chuhtur Sing'h survived, would be no bar to its authenticity, were sickness, as is there stated, the cause of his suddenly coming to the determination of abandoning the world. That the execution of such Deed was contemplated at some future period, I cannot doubt; and this, an increase of his illness would readily account for his anxiety to give speedy effect to. The 2,000 Rupees' stamp, stated to have been purchased by his servants, on the day preceding his death, may have been obtained with a view to re-engross it, always supposing the deceased to have been at the time capable of executing it; which if he had not been, he would never have been permitted thus long to remain without being removed to the Ganges, as proved by the alleged precipitancy with which it (his removal) was subsequently attempted. That he would thus provide for the succession in conformity with immemorial usage, and with the recollection of the anxiety undergone by himself, in consequence of Keerut Sing'h's attempt to overthrow such order of things, I cannot doubt. Unless therefore it were established that sudden death had prevented his taking such precaution in his son's behalf, I am of opinion that there exists, *a priori*, the most violent presumption in favor of the authenticity of the Deed.

Numerous witnesses have been examined, as will be seen, as to this point; nor will it be found that any such discrepancy exists in their statement of the minute circumstances attending its (the Deed's) execution and publication, as renders it undeserving of credit. It is, as will be observed, *mutatis mutundis*, a transcript of that of Madho Sing'h; while one draft sufficed, in like manner, for each of the other papers at the time drawn out. I must therefore be of

opinion that this Deed was prepared, as stated, by the desire and under the immediate supervision of Chuhtur Sing'h; though not perhaps so systematically as the witnesses make out, and certainly not when the deceased Rajah was in the best possible health. That the witnesses have in this deviated from the truth, I entertain no doubt; and can only account for it, in the face of the admission of the deceased in the Deed itself, by the alarm created by the circumstance of the witnesses for the plaintiff having been taken down to Calcutta, immediately after Chuhtur Sing'h's death, and there sworn before a Magistrate to the facts alleged to be connected with it; which led them to conceal what the deceased himself admits, and the absence of which would throw yet greater suspicion on the circumstance of the precipitancy observable in its preparation. I therefore uphold the Deed, and the succession of the defendant, as thus provided for; and dismiss the suit, with costs chargeable to the Plaintiff.'

This is the decision,—with the facts, inferences, and opinions recorded in it,—the appeal against which is now before the Sudder Court. On the same date another decision was passed, by the same judge, in a separate case, in which the present respondent was sued by Gunneish Dutt Sing'h, his cousin, for a similar partition of the Estate in his, the cousin's favor, as was claimed in the present instance by the brother. The result was the same: a detailed exposition of the case will be found elsewhere: but before proceeding further in that under consideration, it is proper to premise, that the two cases were found to be so intimately connected and blended, as regards the evidence exhibited, that a simultaneous disposal of both was necessary; and that in any general observations, or allusions in what follows, the proceedings in both cases are to be considered as furnishing the data. Particular documents will of course be referred to by their respective designations.

As before, so now, the points to be determined, are, by what law in the case, the succession is to be determined—by the *Shasturs*, as urged by the appellant, or by *Koolachar* (or Family Usage) as claimed by the respondent; and whether a certain Deed, purporting to be that of Rajah Chuhtur Sing'h, was really so, and if so, whether good for the succession, as provided for by it, under the law which may be held applicable to it.

What was before maintained by the parties respectively, in regard to these points, is now repeated; the appellant impugning, *seriatim*, every document and item of evidence of importance, filed by, or furnished on behalf of the respondent; and every deduction from these by the zillah judge; and every opinion set forth by him as to the applicability and bearing of the law and usage, by which he professes to have been guided in the judgment he has arrived at.

I shall divide and arrange the matter to be investigated some-

what differently from the order before followed, and consider the case under three heads:

1st. The Deeds, as regards their execution.

2nd. The *Koolachar*, or Family Usage, as proved, or otherwise, to have prevailed—independently of its legality with reference to the *Shasturs* and the Law.

3rd. The validity of the Inheritance and Succession of respondent, under the Deeds in virtue of which he claims to hold, with reference to the Usage, the *Shasturs*, and the Law.

The Deed of Madho Sing'h is the first touched upon by the zillah judge: which Deed, he observes, 'can only be construed as the act of one who holds at his own free will and disposal that which he thus bestows.' A translation of this Deed has already been given.

Independently of this being invalid, because illegal, under any other view of it, it is declared by appellant, to be nothing more than a common Deed of Partition, by the terms of which the hereditary estate was disposed of, as shewn, by the occupant of the time; the larger portion bestowed upon the eldest son (Chuhtur Sing'h) having been so bestowed by consent of his younger brethren: *Koolachar*, he observes, is no where mentioned or alluded to in it; and *Rajneet*, which (correctly written *Rajneeti*) signifies the Art of Government or Duty of a Prince, has no positive meaning as there introduced; and, with the utmost latitude of expression and probable intention, can only be construed into a recorded assurance, on the part of the father, that no proper respect would be wanting on that of the junior members of the family, towards him, whom, with reference both to age and station, they would look up to as constituted, by themselves, the head and representative of the family.

I think, with the zillah judge, that the Deed in question must be regarded as the act of one, who held—or believed he held—at his own free will and disposal, that which he bestowed by it. Whether he so held it, depends upon the law applicable to such freedom and competency as was presumed to exist: *that* will be considered in due course: all we have now to deal with, is the intention of the writer, and the true value and meaning of the instrument, the record of such intention. The wording of the Deed, is clear enough: it appropriates the estate; and, so far is not questioned. It is, says appellant, the Will of a great proprietor disposing of his property, as set forth, with the approval and consent of all concerned, amongst his sons, his natural and legal heirs; between whom, reciprocal courtesy, with a marked respect from the younger brethren towards their elder brother, is enjoined and anticipated. It is, says respondent, the Deed of a Rajah, the Inheritor and Possessor of the domain he bequeaths, from a line of ancestry of many centuries, by the descent and succession through which, that rule has become established, which confers the privilege he exercises; nothing doubt-

ing that respect towards his successor, thus appointed, which, independently of brotherly affection, is due to the rank and dignity which will invest him. However improperly, as regards its strict signification, the word *Rajnéet* may have been used, it were impossible, I think, on any reasonable ground, to dispute its total irrelevancy if found to occur in a Deed of Partition executed by a common land-proprietor. However perverted to imply mere superiority of age or fortune, it has the impress of nobility in it and upon it, which cannot be effaced, and which will not admit of its use or adoption towards any but a noble. Of the asserted sanction or assent of the junior members of the family, to the execution of this Deed, there is no evidence whatever; and it only remains to be mentioned that an urzee from the Rajah (Madho Sing'h) to the district judge, the acknowledgment upon which bears date 'June 27th 1807,' intimates to that authority, that 'he (the Rajah) being sick, is about to proceed to Benares, and that he has conferred every thing on his eldest son Chuhtur Sing'h, with exception to three pergunnahs (named) which are to be enjoyed by his other three sons respectively.'

Without quoting what may be found on reference, it may be as well to advert here to the zillah judge's remarks generally, upon this document; and more particularly to where he observes, that exhibits on the part of respondent prove that the rejected applications of Keerut Sing'h and Govind Sing'h, to have their names enrolled as coparceners in the zemindaree or ancestrel estate, were founded upon it. This is true: but the authenticity, that is the execution of the Deed by Madho Sing'h, is not questioned by appellant; the utter illegality of it, under any other interpretation and circumstances than such as he has attached to it, is the only point contended for. Of that presently: meanwhile, this would appear to be the place to consider the authenticity of the impugned Deed of his (Madho Sing'h's) successor, Chuhtur Sing'h; and, with it, such other Deeds of their predecessors, as have been laid (in the *two* cases) before the Court. These, all in original, are as follows; filed under the designation of 'Dustavees Rajgee':

1st. The Deed of Muheenath Thakur, in favor of Nirput Thakur, dated in 1098 Fuslee, in purport thus: 'To Baboo Nirput Sing'h, Greeting: Being sick and without hope of recovery, I am about to proceed to Benares. I therefore bestow upon you the *Raj* of Tirhoot and pergunnah Dhurmpore (in Purneah)—every thing moveable and immoveable, with all proprietary benefits and privileges. Take it, and enjoy it! I adopt you.'

2nd. The Deed of Nirput Thakur, in favor of Muharajah Ragho Sing'h, dated in 1108 Fuslee. 'He is old, and becoming more and more infirm; and is desirous of residing on the banks of the Ganges: bestows upon him (Ragho Sing'h) the *Raj* of Tirhoot, and Dhurmpore; to hold and enjoy. To Baboos Sheonundun

Sing'h, Rughonundun Sing'h, Nundnundun Sing'h, Kunwur Sing'h, and Thakur Sing'h, has given as a provision certain lands, as set forth in separate Deeds. This bequest he (Ragho Sing'h) will confirm.'

3rd. The Deed of Muharajah Ragho Sing'h, in favor of Muharajah Bishun Sing'h, dated in 1146 F. To the same purport, with the omission of infirmity or other motive to the execution, as the preceding,—with the requisite change of names.

4th. The Deed of Muharajah Bishun Sing'h, in favor of Muharajah Nurindur Sing'h, dated in 1150 F. 'Is sick; therefore, &c.' as before.

5th. The Deed of Muharajah Nurindur Sing'h, in favor of Muharajah Pirtab Sing'h, dated in 1167 F. 'Had, before, when sick, made over to him (Pirtab Sing'h) the management of the *Raj* affairs: now, growing worse, confers upon him the *Raj*, &c.' concluding with 'I have adopted you.'

6th. The Deed of Muharajah Pirtab Sing'h, in favor of Muharajah Madho Sing'h, dated Assar, Soodee 13th 1182 F. 'In the uncertainty of life at his advanced age, confers, &c.' concludes with 'Having no son, I adopt you.'

7th. The Deed of Muharajah Madho Sing'h, in favor of Muharajah Chuhtur Sing'h, dated in 1214 F. A translation of this has already been given by the zillah judge.

8th. The Deed of Muharajah Chuhtur Sing'h, in favor of Muharajah Roodur Sing'h, dated Cheyt, Soodee 11th, 1246 F.

All the above are superscribed or marked with the *Fish*, the usual emblem of sovereignty or high nobility; each differing in outline and the lines or characters composing it, from the rest. The writing and paper are worn and discolored, as might be supposed likely, with reference to the dates respectively.

Of these eight Deeds, the authenticity of the 6th and 8th only remains to be further noticed. The five first, appellant observes, are of dates antecedent to English Rule, and nothing is on record or forthcoming, to test them, or upon which admission or rejection of them might be grounded: the 7th has (as regards the execution of it) been already disposed of.

The 6th Deed, that of Pirtab Sing'h, bears date as noted, 'Assar, Soodee 13th 1182 F.'—corresponding with the 12th of July 1775, —on which date of course, if the instrument is what it is said to be, the testator was alive to execute it. In the zillah court, this was not contested; nor in the petition of appeal to this Court; nor in the subsequent pleadings. The appellant however applied for and obtained permission, under Section 16, Regulation VI. of 1793, to file certain papers, procured by him (by copy) from the Government Records, to shew, amongst other things, that, on the date of that Deed, Pirtab Sing'h was not in existence; and that, consequently, the Deed must be a forgery, and be rejected as such.

The following is a transcript of the document submitted to establish the fact:

"Extract Proceedings (Patna) of the 13th July 1775. Received an Urzee from Roy Mohun Lall, renter of Sircar Tirhutt, representing that Rajah Pirtab Sing'h, who had been a month ill with ulcerous sores on his neck and breast, expired the 9th instant, and requests a Perwannah may be written to his brother Mhadun Sing'h desiring his attention to the collections.

Agreed, that we reply to Roy Mohun Lal, that we have received his Urzee advising us of the death of Pirtab Sing'h, Rajah of Tirhutt; that to prevent any interruption in the business of the collections of that Sircar, we have complied with his request in writing to Mhadoo Sing'h to act in the room of his brother; that we direct him to send us in a particular list of the family of the deceased; that it is also necessary Mhadoo Sing'h should apply for a sunnud from the Presidency confirming him on the *Raje*, agreeable to a Regulation of the Honorable the Governor General and Council of Revenue, a copy of which we herewith enclose him."

Mhaudoo take care of the collections.

Signed by five members of the Patna Council.

On the part of appellant, it is urged, that such a document, official and attested as it is, is fatal to the character and value of that, the falsehood of which is conclusively shewn by it; and that the worthlessness of one document being thus proved, is of itself sufficient to throw a doubt upon others, where direct evidence could not be obtained to test them. Respondent observes, that the original communication of this person, Roy Mohun Lal, is not filed; that the circumstance represented by him, was so on authority not stated, and which may have been common rumour; that the copy now submitted, was not taken from the original, but from a prior copy, not attested, entered on the records of the Patna Council, by whom not known; that, as evidence, such a paper is altogether inadmissible; that, however, if admitted, he, respondent, claims the consideration of the Court to the whole of its contents, which, in the first place, by the actual succession of Madho Sing'h to all which the Deed of Pirtab Sing'h had conferred, prove the validity of the Deed; and, then, that Pirtab Sing'h had held, and in virtue of his own occupancy had bestowed upon his heir and successor Madho Sing'h, the *Raj* Estate; that this succession was not only regarded as a matter of course by the local Council, but that the new Rajah was explicitly acknowledged as such, and instructed by them as to what it behoved him to do towards carrying into effect the will and intention of his deceased brother.

I concur with the respondent; and taking the document as a whole, consider it favorable rather than adverse to his plea.

Chuhtur Sing'h's Deed remains to be disposed of. The zillah judge has given so full and clear an exposition of the evidence bearing upon it, as to leave little of moment to be added on the present revisal of that evidence. Adverting to the discrepancy between the avowal by the Deed itself, and the denial by the witnesses to its execution, of the malady of the Rajah, I think it proper to touch briefly on an evil, which pervades, I believe I may safely say, every district, every court, and every occasion involving oral enquiry, throughout India, where fact is to be elicited by native testimony. When a few plain words, scarcely extending beyond yea or nay, would exhibit all that it might be the wish and interest of a deponent to establish, he will not,—he cannot—speak the 'truth and nothing but the truth.' After being sworn, he will state his age, say at thirty: he will then proceed to declare to transactions and incidents, the occurrence of which should, in every particular, be perfectly true; but it is absolutely necessary, in his opinion, that it should be confirmed by himself: It took place forty years before: how can he depose to it? 'He was present and saw it,' is returned, with as much unconcern as if it were so; and when put in mind of his oath and his age, 'He had forgotten; his father must have told him of it.' The recording Mohurrir will put all this to paper with as much unconcern as it was uttered; and not the slightest surprise will be expressed or felt by any individual of the crowd that may chance to be assembled. In the present instance I have no doubt whatever, of this being a fair sample of the fact. The Rajah was suffering under the malady alluded to by himself; but at the time deposed to, he was free from any paroxysm incapacitating him from performing what it is sworn he did perform; and that,—without advertence to the possibility, not to say probability, of the absence of any external evidence of inward derangement,—was sufficient for maintaining a freedom from all ailment. I say, I have no doubt of this,—because the cross questioning applied to the witnesses, twelve in number, was extremely severe and searching, and yet no contradiction was obtained under it on any one point material to the issue,—I believe I might have said, on any point whatever; and some of these depositions were of a length to occupy the Court above two hours, each, in the perusal. An additional motive against the execution of such a deed at such a season, has been discovered by appellant in the unfavorable aspect of the planets; but as the plea was a *vivâ voce* one on the part of his counsel, is not on the record, and I might misrepresent it, I content myself with stating that the opposing counsel successfully repelled it. 'There are no witnesses to the Deed itself,' says appellant—'There are a dozen to shew it was executed,' returns respondent. 'The Registry was not applied for till after Chuhtur Sing'h's death'—adds appellant—'If it had not been applied for at all, the Deed was none the worse,' replies respondent.

I concur with the zillah judge, on the grounds before and now exhibited, that this Deed must be acknowledged to have been prepared by the desire and under the immediate supervision of Chuhtur Sing'h, and be admitted as such: whether Chuhtur Sing'h was legally competent to execute it, is another question.

Much has been incidentally recorded on the subject of *Koolachar*, or Family Usage, when treating of the fact of execution (of the Deeds submitted). If it be admitted that through a hundred and fifty years (a portion only of the time contended for) eight individuals have successively inherited, each in virtue of a Will, or written Deed, on the part of his immediate predecessor, and that predecessor in every instance (but one, where a cousin intervened, and became a son by adoption) the father or elder brother of the succeeding heir,—much could not, one might suppose, be wanting to establish the fact of such succession having become a custom, or usage, in the family in which it had so long uninterruptedly prevailed. It would, further, seem probable at least, that, amidst the numbers whose interests would be involved and compromised in the observance of such a rule, some would be found, who, were it not based on some understood and fixed principle, would come forward to dispute it, through any opening that might offer to oppose its continuance. But this does not appear to have occurred. In the appended genealogical table, several of the Thakurs or Rajahs who held the family honors and domain, will be found to have had two, or three, or even five brethren; but there is no record nor tradition of any challenge of the right to the Guddee (to the Throne, so to speak) by ambition or avarice, or any lust after what could not be claimed or aspired to in the face of a usage,—upheld by family pride, reflected from the chief—the Rajah—upon every, the most distant member of the clan, of which he was the princely representative.

Great stress is laid by appellant, on a document executed by Rajah Ram Sing'h, the grandson of Nirput Thakur, and first cousin of the brothers, Rajahs Bishun Sing'h and Nurindur Sing'h; both of whom, in succession, held the *Raj*. This document is a copy of a sunnud dated in 1159 F. (1752) from 'Rajah Ram Sing'h, zemindar, Sircar Tirhoot,' bestowing certain villages in that Sircar on one Raee Doolubh Ram. The villages are stated to be Chundora and others, in pergunnah Puohye. On the margin of the paper is a memorandum of its contents, which represents the grant to be to 'Raj Bullub'h.' There is no signature to the sunnud; but on a plain portion of it, is noted 'the place of the Fish.' In the body of it, it is stated that the grant is for religious purposes (Mohutturan.) The Raj Bullub'h mentioned is explained, by another paper, to have been the son of Raee Doolub'h Ram. A proceeding of the collector of Tirhoot, dated February 25th 1832, acknowledges this sunnud as good and valid for the protection of the Mohutturan lands mentioned in it, against the exaction of Govern-

ment revenue; recording incidentally that the *mâlik* of the lands was Rajah Madho Sing'h. In another proceeding of the collector, of April 8th 1833, on another religious grant by 'Rajah Ram Sing'h', the *mâliks* are named from the time of Ram Sing'h to the date of the collector's roobukaree, viz. Rajah Nurindur Sing'h, Rajah Pirtab Sing'h, Rajah Madho Sing'h. An extract from the '*Kitâbminhaee*' of 1209 F. shews, that in 1161 F. Baboo Ram Sing'h gave fifty-one beegahs of land, for religious purposes, in Mouzah Sunhor; of which land, in 1209 F. Rajah Madho Sing'h is the recorded proprietor.

Upon the above sunnud of 1159 F. is founded, as just said, with much confidence, one of the objections urged by appellant against the usage under which respondent claims to inherit to the exclusion of his brethren. 'If,' he argues, 'Rajah Ram Sing'h could thus alienate by his sunnud, lands acknowledged to be within the limits of the *Raj* Estate; which sunnud has been admitted by the Revenue Authorities a protection against all taxation; how can it be maintained that the Estate was then vested in and enjoyed, wholly, by another member of the family? He (Ram Sing'h) evidently owned and held his legal portion of the ancestrel inheritance, and did with it, independently, as his pleasure prompted; and in title also, was on a par with the senior of his house,—that is, he was *Rajah* Ram Sing'h,—to which he had as well founded a right as any others that assumed it.'

Respondent observes, that 'the assumption of the title of Rajah in the instance of Ram Sing'h, is no proof of any thing but such assumption; that on occasion, as shewn, he styled himself, and others styled him, *Baboo*; that, of the *Raj* Lands, he could confer a grant, for the period of his own life, from the stipulated portion allotted to him for maintenance as a younger son or brother—nothing further; and that it is evident from the revenue records now submitted, that this very grant, as well as that of 1161 F. was, after his demise, altogether dependent for confirmation and continuance on the will and pleasure of each succeeding Rajah, who, in turn, became, as recorded, *mâlik*. The reluctance of a Hindoo to cancel a grant made in the name or cause of religion, needs no mention.'

It is admitted by appellant, that Ragho Sing'h (who, he asserts, was the first of the family, who bore the title of Rajah) was succeeded by his son Rajah Bishun Sing'h; Bishun Sing'h, by his brother Rajah Nurindur Sing'h; and Nurindur Sing'h by his cousin—adopted by him—Rajah Pirtab Sing'h. Now Ram Sing'h was the son of Nundnundun Sing'h, a brother of Ragho Sing'h, and consequently his (Ragho Sing'h's) nephew: how then could he in the admitted line of descent, have been and have held, as is asserted? It is clear, that he did not intervene as Rajah between Nurindur and Pirtab: the adoption of the latter by the former is sufficient to

shew this: and this adoption is not only not denied, but is pleaded by appellant, as, if it pre-existed, being of itself fatal to the continuance of the *Koolachar*; inasmuch, as the individual adopted follows the usages of his own family, not of that of which he becomes a member by adoption: forgetting apparently, that Nurindur Sing'h and Pirtab Sing'h were descended from the same common stock,—from Soobhunkur Thakoor, the son of Muheish Thakur, that is; and that Pirtab was the next heir, independently of any adoption. It is pretended that Ram Sing'h must have shared the *Raj* (as such) *jointly* with Nurindur. I mention this because it has been advanced; but there is no evidence to support it; and being against the custom, both of the family and the country, it refutes itself.

In the other suit (No. 95) is filed an Extract from the *Kitabminhaeé*, of 1198 F. (1791) which, as connected with this particular question, seems of importance. This extract sets forth, that 'Baboo Nundeh Sing'h (identical with Nundnundun Sing'h, the father of Ram Sing'h and son of Nirput Sing'h, according to appellant) 'the brother of Rajah Ragho Sing'h, had granted by a sunnud, 107 beegahs of land, in Mouzah Deheebhut, Pergunnah Hâtee, for religious purposes, to Urjun Misr.' In the last column of the paper, headed '*Milkeeutdar*' (or proprietor) appears 'Rajah Madho Sing'h'—at that time holding the *Raj* of Durbhunga. Now, it is evident, I think, from the bestower of this grant being designated as the brother of the then Rajah, that the circumstance was in some way deemed necessary to be mentioned; and from the present Rajah (of 1198 F. that is) being recorded as the proprietor, after three intervening successions, and pergunna Hâtee being the *Raj* domain, the inference would appear clear and legitimate, that the land granted belonged to the *Raj*; that Baboo Nundeh Sing'h, as son of the late and brother of the living Rajah, had only a life interest and power in and over it; and that, therefore, at his death, that which had been alienated to the extent of his competency, reverted to the Rajah as general proprietor; the grant being open to rescission or confirmation, at the discretion of the latter. Being a religious grant, the confirmation of it was all but a matter of course; but the proprietary right still remained vested in the Rajah; and thus we find that right recorded, in 1198, to lie with Madho Sing'h, then on the *Guddee*. The names changed, I regard this as precisely the history of the sunnud of Ram Sing'h, of 1159. Why in that instance the title of Rajah was assumed by him, matters little, and cannot now be explained; but assuredly it was not from any right arising from a distinct or coparcenary proprietary possession of any portion of the *Raj* Estate.

Facts and circumstances connected with Keerut Sing'h, the uncle of the parties to the suit, now come to be considered: and first the decision of the Provincial Court at Patna, bearing date June 22d 1814, in a suit 'Baboo Keerut Sing'h *versus* Rajah

Chuhtur Sing'h;' the former claiming a third—his portion under the law—of the ancestrel property of the family generally, at the time in the lands of the latter, and held by him as Rajah and sole heir. The claim, as already shewn in the present decision of the zillah judge, was dismissed, and the Rajah confirmed in his possession under the Will or Deed of Rajah Madho Sing'h, their father. In this suit, it was found, that Keerut Sing'h had accepted and held the lands allotted to him by his father as a maintenance (pergunnah Jubdee) under the deed which he subsequently disputed; and such acceptance and occupancy were declared by the pundits' *bewustha* delivered in the case, to be tantamount to an acknowledgment of the validity of the Deed contested. The decision of the Provincial Court was appealed to the Sudder Court; but the appeal was withdrawn, under a *baznameh* (or Deed of Revocation) filed by Keerut Sing'h,—in consequence, says appellant, of a compromise between him and his brother Chuhtur Sing'h; the latter agreeing to withdraw a counter prosecution on the former's waiving all claim to his portion of the *Raj* Estate. Now, there is no proof of any prosecution on the part of Chuhtur Sing'h, nor any mention of or allusion to any—and of course none to any compromise of any—in Keerut Sing'h's *baznameh*, or the Sudder Court's proceeding disposing of it; and the document produced by appellant as the *baznameh* of Chuhtur Sing'h, bears date upwards of a month later than the other, and relates to a distinct matter—a questionable gift by the Ranee of Rajah Nurindur Sing'h, confirmed by Chuhtur Sing'h, who by this instrument disclaims all interference with it. There is no necessary, nor apparent connexion between the two; and were there, it does not follow, that, because Chuhtur Sing'h confirmed a gift made by the wife of his and his brother's benefactor, Nurindur Sing'h,—that, therefore, the act involved a bribe to induce a reciprocal advantage. There is motive sufficient to be discovered, setting aside a possible impulse of generosity and kindly feeling towards his brother, in the cessation of a vexatious, and doubtless expensive law-suit, by which he had long been harassed; without resorting to the imputation pretended, of which there is no evidence whatever but by a forced implication.

I dismiss Keerut Sing'h with a brief reference to a petition presented in the zillah Court in the year 1828. It is from Rajah Chuhtur Sing'h, complaining against him (Keerut Sing'h) for, amongst other grievances, assuming the title of *Rajah*, when only by right and position, a *Baboo;* and setting forth the *dustoor-khandan*, or Family Usage, under which the eldest son only, was *Rajah*, &c. With this petition are filed certain papers exhibiting the result of enquiries into Keerut Sing'h's conduct and pretensions; and one of these is a letter from the then Collector of Tirhoot to the Secretary to the Board of Revenue, in which he (Keerut Sing'h) is

represented as possessing no right whatever that might interfere with those, which are distinct and independent, of the Rajah of Durbhunga. It states him (Keerut Sing'h) to have property of his own, privately purchased, besides the provision settled upon him by his father (Rajah Madho Sing'h); to be of very indifferent character; apparently imbecile, and under the influence of others; and to have an unaccountable enmity to his brother, Chuhtur Sing'h. A communication from Government, of the 13th February 1829, intimates the rejection, founded on the reports furnished by the Board of Revenue, the Zillah Judge and the Collector, of Keerut Sing'h's claim—to a *Khilut* and the Title of *Rajah.*

I proceed to the examination of what has been advanced against—' to use the words of the zillah judge—the remarkable Purwannah (a copy of which is filed) emanating from the Council at Patna; by which certain lands are adjudged to be rent-free on the ground of a *sunnud,* produced, in the name of Nirput Thakur, proving the same to be a grant by the Nazim in 1103 F. (1696) and to have been held successively by Rajahs Ragho Sing'h, Bishun Sing'h, Nurindur Sing'h and Pirtab Sing'h. The Purwannah is dated May 5th 1774, and relates to a village called Soodhan; which the Council intimate to the Amils, is to be considered rent-free and as belonging to the *Raj.* The appellant had pleaded that it belonged equally to all the brothers (sons of Nirput) though recorded in the name of Ragho only. There was no proof of this, nor of the document having been other than it professed to be; but since the admission of this appeal, he has obtained and filed (under the Court's sanction) extracts from the records of the day, to shew that such a purwannah never issued from the Patna Council; and that consequently, the pretended one, submitted by respondent, must be a forgery.

The first evidence to this, is the negative one of the absence of any mention of such issue in the *Index* to the 'Consultation Proceedings' of the Patna Council, for the month of May 1774. The extract now filed, is said by appellant's vakeels, to contain the whole of the Council issues for the month of May 1774, as recorded in the general index lodged in the Secretary's Office; and, as stated by them, the issue of this Purwannah, does not appear. The respondent is not here; and his vakeels observe, that though there may be more than one honest cause assignable for this omission, they can hardly be expected to explain it; but, they add, admitting the extract to be faithful, and perfect as including all the shewn issues for May; still, there is no proof either of non-issue or of forgery; all that is established, is the absence of the record of the fact, in the copy produced: the genuineness or correctness of the index itself, the work of course of an office clerk, they have no means of testing. 'It bears no record of any original seal or signature,' appellant remarks; and two copies of proceedings are

submitted, in proof of both being usual with the Council. This is a mistake: the seal is given, in respondent's copy, by, as usual, a pen circle with the inscription within; and the absence of the English signature is accounted for, by the fact, as shewn, of the Persian copy having been furnished by a native, one Torul Mul; whose ignorance of the language may be taken to account for his not adding what he could neither read, write, nor comprehend. If he took the copy from the record book, too, it is more than probable that the repetition of the same occurring signatures was not observed; more particularly where the documents were in one, the Persian, language and character, and the signatures always in another, in English. Lastly, a proceeding of the Special Commissioner of Behar and Benares, was cited as furnishing conclusive evidence of the Purwannah being the forgery it was declared to be. This proceeding, bearing date July 31st 1841, shews, that the village of Soodhan had been, in 1838, the subject of enquiry by the Deputy Collector, in regard to its liability to assessment; and that the then Rajah (Chuhtur Sing'h) claimed exemption under this Purwannah, which claim was rejected, because, such exemption was beyond the competency of those who had allowed it, (assuming the original to be what the copy indicated,) inasmuch, as their powers were limited by Section 3, Regulation XIX. 1793, to estates not exceeding 100 Rupees of revenue, whilst Soodhan had a jumma attached to it of Rupees 129-12. Now, the Purwannah itself is not the authority for the fact of this asserted jumma; nor is there any thing to substantiate the assumption of its existence at the period at which it (the Purwannah) is dated; whatever after changes, or fiscal experiments, may have induced, connected with the village. It is not probable that the Patna Council would thus overstep their competency; and I have no doubt whatever of the reasoning and inferences of the Deputy Collector being entirely erroneous. But allowing all to be as supposed by that functionary, there is nothing upon which an imputation of forgery might be grounded. Invalid, as beyond what the law vested those with, from whom it issued, it may or may not have been; and its value as evidence would be, as it was with the Deputy Collector, according to the estimate of the presiding authority in the case: in the present instance, it may be rejected, and the advantage anticipated from it, be denied: so far, it were a valuable evidence lost to him who relied upon its support; but it would in no way affect aught else, which would be weighed independently of it. But when it becomes a forgery, an effect is immediately brought into general operation: every thing with which it stands connected, is looked upon with suspicion; and falsehood and fabrication are seen in every stage of the proceedings. I do not think the validity and value of this document have been successfully impugned by what has now been adduced against its issue,—good or not good as it may have been deemed, as a shield against the assessment of the lands of Soodhan.

There are a great many papers filed by respondent, of more or less consequence, to shew, that the *Koolachar*, or Family Usage, was not merely of partial notoriety and acknowledgment with the local community and public functionaries, but that it was recognised and made the subject of notice and complimentary courtesy on the part of the Government. A *purwannah* from the Governor General of the 21st May 1824, confers a *Khilut* on Rajah Roodur Sing'h (respondent) on the occasion of his marriage; and in another of the 12th October 1840, the same individual is addressed, by the same high authority, as 'Muharajah Roodur Sing'h,' with the honorable addition of 'Buhadur.' All this, is no proof, either of Family Usage, or of its legality, if such prevailed, observes appellant. It is not proof of either I admit: but it affords collateral evidence that what appellant represents as usurped and maintained in the face of law and custom, was locally regarded with deference and respect, and was acknowledged on more than one occasion (and others might be instanced) by the Supreme Rulers of the Empire, as entitled to an open expression of good will and consideration.

With what has been recorded by the zillah judge, I think enough has been exhibited, to leave no reasonable doubt of the execution of the Deeds necessary to a succession to the *Guddee* and *Raj* Domain, by a *Rajah* of Durbhunga, so called to the inheritance; and as little, of the *Koolachar*, or Family Usage, warranting the nomination and bequest, through the instrumentality of Deeds so executed. But the Deeds having been duly executed, and the Family Usage established, avail nothing, if the law is proved to have been infringed: and this remains to be determined.

The appellant has cited a vast mass of authority in proof of the illegality of respondent's succession to the Estate—the *title* he is apparently welcome to; and pleads, that no length of time can render legal, in Mithila, within the limits of which the property lies, what the *Shasturs* current in and applicable to that part of the country, and judicial precedents founded upon them, alike oppose and disallow.

The authorities referred to, are as follows; the italics and parentheses, are in the original:

1st. Macnaghten on Hindoo Law,—vol. I. pp. 76-77. This is to shew, that if *Koolachar* had previously obtained, the adoption (Kurta-pootur) of Pirtab Sing'h by Nurindur Sing'h broke the chain of descent, and thereby cancelled the Usage before prevailing. 'He (the individual adopted) as well as his issue, continues, after the adoption, to be considered a member of his natural family, and he takes the inheritance both of his own family and that of his adopting father.'—'This relation of *Kritrima* son extends to the contracting parties only; and the son so adopted will not be considered the grandson of the adopting father's father, nor will the son of

the adopted be considered the grandson of his adopting father. He does not inherit collaterally.'

The inapplicability of this, in the present case, the adopter and adopted having been of the same family, and the latter heir at law independently of adoption, has been already adverted to. As quoted, however, it has been deemed proper to introduce it.

2d. Same authority, vol. I. pp. 44, 46. 'The law of Benares, on the other hand, prohibits any unequal distribution by the father of ancestrel property of whatever description, as well as of immoveable property acquired by himself. At a distribution of his own personal acquisitions even, he cannot, according to the same law, reserve more than two shares for himself; and as the maxim of *factum valet* does not apply in that school, any unequal distribution of real property must be considered as not only sinful but illegal, &c.'

3d. Colebrooke's translation of the *Mitacshara*, p. 264, ver. 4-5. 'True, this unequal partition is found in the sacred ordinances; but it must not be practised, because it is abhorred by the world; since that is forbidden by the maxim "Practise not that which is legal, but is abhorred by the world, for it secures not celestial bliss; as the practise (of offering bulls) is shunned, on account of popular prejudice, notwithstanding the injunction "Offer to a venerable priest a bull or a large goat," and as the slaying of a cow is for the same reason disused, notwithstanding the precept "Slay a barren cow as a victim consecrated to MITRA and VARUNA." It is expressly declared, "As the duty of an appointment (to raise up seed to another) and as the slaying of a cow for victim, are disused, so is partition with deductions (in favor of elder brothers.)"'

4th. Colebrooke's translation of the *Dayabhaga*, p. 26. v. 27. 'Accordingly since persons of the present day, (who are younger brothers,) entertain not great veneration (for their elders,) equal distribution is alone seen in the world; as also, because elder brothers deserving of deducted allotments are now rare.'

5th. Sir William Jones's translation of Menu, ch. 1, p. 14, v. 108, and ch. 8, p. 194, v. 41, 46. 'Immemorial custom is transcendent law, approved in the sacred scripture, and the codes of divine legislators: let every man therefore, of the three principal classes, who has a due reverence for the *supreme* spirit *which dwells in him*, diligently and constantly observe immemorial custom.'—'A king who knows the revealed law must enquire into the particular laws of classes, the laws or *usages* of districts, the customs of traders, and the rules of certain families, and establish their peculiar laws, if *they be not repugnant to the law of God.*'—'What has been practised by good men and by virtuous *Brahmens*, if it be not inconsistent with the legal customs of provinces or districts, of classes and families, let him establish.'

6th. Sir Thomas Strange on Hindu Law,—Vol. I. pp. 15, and 255-6. 'But between the Hindu and our own law, there is, in

respect to property, this material difference; that whereas, while, by ours, *land* descends to the heir at law, the *personal goods* of a deceased vest in executors or administrators, distributable among the next of kin;—by the Hindu law, *real* and *personal* are alike descendible to the same persons, and subject to the same incumbrances. But though real and personal property so far class together, and are not distinguishable, great importance is attached by it to land, in which in particular, the sons are considered as possessing a special interest; having, with their father, by birth, according to the doctrine of Mitacshara, prevalent in the Peninsula, and north of India, so far a co-ordinate right in that part of it, which is ancestrel, that, if he thinks proper to come to a partition in his life time, he must divide as directed by law; that is, give them and himself equal shares: nor is it in his power to aliene any considerable portion of it without their concurrence. It is according to the doctrines of this school, like dignities with us, inherent in the blood; and therefore, so far as regards the interest of parceners, unalienable.'—'The practice however subsists; and being, with reference to the individuals concerned, essentially vicious, it remains open to examination; and one thing seems plain, that in affirming it, courts must have a resting place somewhere. Neither in the English nor in the Hindu law can they find any. The latter, as in force to the Southward, repudiates every idea of the kind in the form and extent to which it has been attempted to carry it; and, for the English, it is excluded by our charters, wherever *the inheritance of the native* is concerned. Can then the right of a Hindu, to dispose of his property by will at Madras, be referred to *custom? Custom* is a branch of Hindu, as it is of our own law. "Immemorial custom (says Menu) is transcendent law." But how does he define it? by "good usages, long established." And what are *good usages* for this purpose?—"practices not inconsistent with the legal customs of the country." Can the practice in question be considered, for the Hindus, as a *good usage long established?* Originating in corruption, its establishment is as yesterday; and it violates their most important institutions, as well as our own charters. Should it nevertheless be contended, that, within the limits of the King's Courts at Madras, the Hindu must now acquiesce in the exercise of the power in question, bound by the practice that has obtained, the difficulty will be to define it;—to declare the extent of the obligation, and to settle by what law the details of such power are to be governed.'

7th. Borradaile's translation of the *Vyuvuhara Muyookhu,* p. 56, sec. 11. 'And this partition by deduction, is not respected in the *Kuli* (or present) age, for it is one of the things expressly set aside in the present age.'

8th. Sir Francis Macnaghten on Hindu Law, p. 318. 'He proceeds'—*Mr. Colebrooke,* that is—"Upon the principle which I

have stated, a Hindoo in Bengal, may leave by Will, *all his own acquisitions;* but is restricted, if he have sons, from distributing *ancestrel property according to his own pleasure.* In countries in which the doctrines of the *Mitacshara* prevail, he is restrained from giving away *immoveables,* and from making any other partition of his possessions among his male descendants, but such as the law has sanctioned; consequently on the principle before explained, he would be restricted from distributing immoveables in a mode not sanctioned by law, but may dispose of *moveables,* of which the law permits him to make gifts on account of affection; not however to the amount of the whole property. If there be no *sons* or *male descendants,* and the property be not shared by a co-heir, the whole of his possessions, being his separate, and distinct property, may be disposed of by WILL as he pleases." '

9th. Harington's Analysis, Vol. I. pp. 195-6. 'It was therefore enacted by Regulation XI. 1793, that after the 1st July 1794, "if any zemindar, independent talookdar, or other actual proprietor of land, shall die without a Will, or without having declared by a writing, or verbally, to whom and in what manner his or her landed property is to devolve, after his or her demise, and shall leave two or more heirs who by the Mahomedan or Hindu law (according as the parties may be of the former or latter persuasion) may be respectively entitled to succeed to a portion of the landed property of the deceased, such persons shall succeed to the shares to which they may be so entitled."

'Provision was at the same time made, by the above regulation, for allowing two or more persons, succeeding to an estate, either to hold it joint and undivided, under a common manager; or to obtain a division and separate possession of their respective shares, under the rules prescribed for the division of estates, paying revenue to Government, in Regulation XXV. 1793. It was further provided, that nothing contained in Regulation XI. 1793, should be construed to entitle any person to the share of an estate held entire by any individual, or that might devolve entire to any individual prior to the 1st July 1794, under the custom for the future abolition of which that regulation was enacted; "Nor to prohibit any actual proprietor of land bequeathing or transferring by Will, or by declaration in writing, or verbally, either prior or subsequent to the 1st July 1794, his or her landed estate entire to his or her eldest son, or next heir, or other son or heir, in exclusion to all other sons or heirs, or to any person or persons, or to two or more of his or her heirs, in exclusion of all other persons or heirs, in the proportions, and to be held in the manner which such proprietor may think proper; provided that the bequest or transfer be not repugnant to any regulations that have been or may be passed by the Governor General in Council, or contrary to the Hindu or Mahomedan Law; and that the bequest or transfer,

whether made by will, or other writing, or verbally, be authenticated by, or made before, such witnesses and in such manner, as those laws and regulations respectively do or may require." '

10th. Stephen's Commentaries on the Laws of England, Vol. I. p 59. 'Lastly, it is to be understood that no custom can prevail against an express act of parliament.'

11th. Colebrooke's Digest of the Laws and Regulations, Vol. III. pp. 5, 64, 103. 'In all suits regarding succession, inheritance, marriage, and caste, and other religious usages, or institutions, the laws of the Koran with respect to Mahomedans, and of the Shaster with respect to Gentoos, shall be invariably adhered to; and on all such occasions the *Moulavies* or *Pundits* shall respectively attend to expound the law.'—'But that in cases of succession to *Zemindaries*, *Talookdaries* and *Chowdraies*, the Judge do also ascertain whether they have been regulated by any general usage of the Pergunnah, where the disputed land is situated, or by any particular usage of the family suing, and do consider in his decision the weight due to the evidence on this head.'

This is a strong array of legal authority: emanating too, for the most part, from the fountain-head of what it is believed no human legislation can contravene, no worldly enactment supersede. It will meet with all due attention presently. Meanwhile proofs are added, of its paramount influence in judicial proceedings, as shewn in cases determined in this very Court.

The first of these, and the only one I shall exhibit in detail—selected on account of the apparent value placed upon the opinions delivered in it—is to be found in Macnaghten's Reports, Vol. II. p. 74. 'Sham Sing'h v. Musst. Umraotee.' The suit was instituted in the zillah court of Bhagulpore. The plaintiff, as joint heir, claimed a half share of certain lands, which defendant opposed, on the score of the original proprietor (plaintiff's paternal grandfather) having in 1182 F. a short time before his death, made a gift of the whole of his estate to his eldest son, her husband, with a stipulation of a pecuniary provision for the younger son, plaintiff's father. She further pleaded, that, in the year following the gift, her husband took possession of the estate, which he continued to enjoy as sole proprietor until 1210 F. the date of his decease, previous to which he bequeathed the estate to his eldest son, a minor, and provided for the management of it by the defendant during his minority; that the plaintiff's father had never enjoyed any share of the estate in partnership with her late husband; and that the plaintiff had, consequently no right to the portion claimed by him.

The Pundit of the zillah court, when called upon to expound the law applicable to the case, declared the gift by a father of the whole of an ancestrel immoveable estate to one of his sons, to the exclusion of another (in the absence of natural or incurred disqualifying defect on the part of the latter,) to be illegal, and that

both were entitled to equal participation. Upon this, and the evidence to certain land-purchases by the defendant's husband, from the family funds, the half share claimed by the plaintiff, was decreed to him.

On appeal to the provincial court, the Pundit of that court declared the gift to the defendant's husband to be valid: a judgment was passed accordingly, reversing the zillah decree, and awarding maintenance only to the plaintiff, from the defendant.

On a further appeal, to the Sudder Court, it appearing that the estate, to the half of which the plaintiff laid claim, had been generally considered as situate in the province of Mithila and the parties themselves having, in answer to a question put by the Court, admitted that their religious ceremonies connected with funeral and marriage, and other observances, were governed by the Mithila *Shasturs*, the opinions of the law officers of the Sudder Court, of the provincial court of Patna, and of the zillah court of Tirhoot, were required, as to the legality or otherwise (according to the Mithila *Shasturs)* of the alleged gift by the plaintiff's grandfather to the defendant's husband (plaintiff's uncle). The Pundits of the zillah and provincial courts differed in opinion with regard to the law in the case; such gift being pronounced invalid by the former and valid by the latter. The Pundits of the Sudder Court being called upon to state under the Hindoo law, as current in Mithila, 1st, Whether the gift pleaded by the defendant was valid, 2ndly, Whether such gift would be complete without seizin being given during the life time of the donor? expressed their opinion as follows:

1st. 'If a Hindu possessing immoveable ancestrel property, some time previous to his death, express himself to this effect in talking of his eldest son, "He will become sole proprictor on my death, and my younger son be provided by him with a suitable maintenance," the gift cannot take place, from the omission of the word *dan* (donation) in the expression; which, both according to the *Shasturs* and the current practice of the country, is essential to complete the gift. Further, supposing the word *dan* to have been expressed in the above sentence, still, the gift cannot be considered valid; because a father and a son possess an equal right in ancestrel immoveable property, and consequently, the younger brother's right is established and the estate becomes joint property, the gift of which is illegal; and a verbal gift, under any circumstances, of immoveable property, unless supported by a *hibbanâmeh*, is invalid.' Eight authorities are quoted in support of this opinion.

2nd. 'Supposing the donor to have made a gift of the above mentioned property, but not to have given the donee seizin during his life time, the verbal gift is invalid; because the donee has never been in possession of it.' Three authorities are quoted in support of this.

. . . .

In conformity to the above exposition of the Hindu law, final judgment was passed by the Sudder Court, affirming the decree of the zillah judge, and reversing that of the provincial court.

Now, I gather, from the questions put to, and the answers returned by the *Pundits* of the Sudder Court, in this case, that the gift contested and disallowed, was made verbally, without any subsequent, confirmatory, written instrument; and that no possession of such verbal gift, was conferred by the donor. With reference to these omissions, in connexion with the general law of the *Shasturs* against unequal partition, the decision was evidently passed. But the ground upon which the present claim of the respondent is based, is the Will, held by him, of his predecessor, his father, executed according to precedent, and in continuance of the Family Usage of many generations;—which Usage the same law, that upholds equality of partition, admits as a legal exception to what itself ordains. There is no mention in the case quoted, of *Koolachar*, or Family Usage under any designation; and consequently no bearing in it upon the point now at issue.

The same observation applies to the other cases cited by appellant: not one of them involves the question to be determined: all that is established by them, taken separately or as a whole, is, the existence of the general prohibitory law, divested of those attendant circumstances, which occasionally present themselves, and are allowed to neutralize, or qualify, its general intent and operation. I do not therefore enter into any detail of these; but return to an examination of what has been advanced in regard to the law itself—of which these decisions were the fruits.

Eleven authorities (the same recurring in one or two instances) are brought forward as evidence, against the legality of respondent's possession. I shall, for the sake of ready reference, consider them consecutively, agreeably to the numerical arrangement before observed:

1. This, the first, has already been disposed of; but it may be as well to mention, that the fact is not fairly put forth by appellant; inasmuch, as there is no evidence to shew, what is denied, that the succession of Pirtab Sing'h was the immediate effect of his adoption, the legal results of which, appellant professes to exhibit.

2. 3. 4. 5. Of these, evidences of the universality of the interdictory law, and of opinion in regard to its interpretation, Macnaghten is the authority quoted in number 2. In the same work and volume as furnished the quotation given, at page 17, is the following note by him. After adverting to a case in which the general law took effect, in the absence of any proof or plea of Family Usage, he proceeds: 'There is another decision on record (vol. II. page 116, of the Sudder Court's Reports) of a case in which there were sons by different wives, and one party claimed that the estate should be distributed according to the number of wives, without reference to the

number of sons borne by each (a distribution technically termed *Putnibhaga,)* averring that such had been the *Koolachar* or immemorial usage of the family; but the Court determined that the distribution should be made, not with reference to the mothers, but to the number of sons: being of opinion, that although in cases of inheritance, *Koolachar,* or Family Usage has the prescriptive force of law; yet, to establish *Koolachar,* it is necessary that the usage have been ancient and invariable. See also the case of Bhyroochund Rai *versus* Russoomunee, vol. I. page 27; and the case of Sheobukhsh Sing'h *versus* the Heirs of Futteh Sing'h, vol. II. page 265. See also Elem. Hin. Law, App. page 288. In the successions to principalities, and large landed possessions long established, *Koolachar* will have the effect of law, and convey the property to one son to the exclusion of the rest. It has been stated by Mr. Colebrooke, in a note to the Digest (vol. II. page 119,) that the great possessions called *Zemindarees* in official language, are considered by modern Hindu lawyers as tributary principalities.'

In Sir William Jones's 'Ordinances of Menu,' Ch. 8, sections 3 and 164, it is written: 'Each day let him (the king) decide causes, one after another, under the eighteen *principal* titles of law, by arguments and rules drawn from local usages, and from written codes.'—'The plaint can have no effect though it may be supported by evidence, which contains a cause of action inconsistent with positive law or with settled usage.'—Sections 41 and 46, of the same Chapter, are, with the above, quoted by respondent, as in his favor; but appellant putting apparently a different construction upon them, appropriated them; and they will be found under number 5. If they are worth any thing, I have no hesitation in throwing them into the scale of respondent; and I have only postponed the expression of my surprise at appellant's citation of them, to this more suitable opportunity of recording it.

In Macnaghten's Sudder Reports, Vol. III. p. 41, is a note by him (their editor) to the particular case reported, as follows: 'This custom by which the succession to landed estates invariably devolves on a single heir, without a division of the property, has been recognized and declared legal by Regulation X. 1800. A formal enactment was not perhaps necessary as far as the Hindoo law is concerned, that law itself providing for exceptions to its general rules, and declaring that particular customs shall supersede general laws. "A decision must not be made solely by having recourse to the letter of written codes; since, if no decision were made according to the reason of the law, (or according to immemorial usage, for the word *yucti* admits both senses,) there might be a failure of justice." *Colebrooke's Digest of Hindu Law,* vol. II. page 228.'

The *Dayabhaga,* from which the quotation of number 4 is taken, is avowedly only current in Bengal. It has been brought forward by appellant on this occasion, to shew, that though the Bengal and

Mithila *Shasturs* do not agree in particular points, in this (the illegality of unequal partition) they concur, and that 'equal distribution is alone seen in the world.' The following is a copy of a letter addressed by the Judges of the Sudder Court to the Judges of H. M. Supreme Court, on the 2d September 1831: 'On mature consideration of the points referred to us, we are unanimously of opinion, that the only doctrine that can be held by the Sudder Dewanny Adawlut, consistently with the decisions of the Court, and the customs and usages of the people, is, that a Hindoo, who has sons, can sell, give, or pledge without their consent, immoveable ancestrel property situated in the province of Bengal, and that, without the consent of the sons, he can, by will, prevent, alter, or affect their succession to such property.' Signed by all the Judges of the Court.

6. Sir Thomas Strange admits that the practice, declared by the above letter to prevail in Bengal, 'subsists at Madras, though (in his opinion) essentially vicious.' This quotation does not furnish anything, beyond the sentiments of an individual in regard to what he disapproved of, but had no power to rescind or alter.

7. 8. These have been sufficiently answered above by 'Macnaghten' and 'Sir William Jones.'

9. I presume, this quotation of Regulation XI. 1793, to have been made, for the sake of the concluding stipulation in it, that 'the bequest or transfer by Will (sanctioned by it) shall not involve any thing repugnant to law;' but I deem it proper to observe further upon it, that the license extends to '*any* actual proprietor of land;' who may 'bequeath or transfer by Will or written declaration;' and that Regulation X. of 1800, merely permits that to take place, in particular instances, *without a will*, which by XI. of 1793, was dependent upon one. I introduce this with reference to an attempt on the part of appellant to give these Regulations an application and bearing which they evidently were never intended to have; and which under an honest interpretation, it is impossible to attach to them.

10. As applied to the case before the Court, the commentary of Mr. Stephen's would run, 'It is to be understood that no *Koolachar* can prevail against an express law.' There cannot be a doubt of it, and nothing is sought or claimed against such authority.

11. On the first portion of this, it is only necessary to remark, that the attendance on trials in the civil courts, of '*Moulavies* and *Pundits*,' is not now required. As regards the second quotation, I think, it would be difficult to find any thing stronger in support of what appellant has taken so much pains to subvert. In the present case, the judge has done his best 'to ascertain whether the succession has been regulated by any particular Usage of the Family suing; and will consider, in his decision, the weight due to

the evidence on this head.' This is the law; which, in the same breath, appellant declares no Usage can modify, or divert from its prohibitory obligations.

A great many precedents have been cited by respondent in support of what has been opposed by him to the authorities quoted by appellant, besides the cases above alluded to in Macnaghten's notes; but I do not deem it necessary to do more than thus advert to them.

An attempt was made by appellant,—taking advantage of an occasion of revenue embarrassment, of many years ago, when the *Rajah*, though in charge of his estate, was on a limited allowance,—to prove, that he (the *Rajah*) was merely a stipendiary, and that no particular proprietary right was vested in him. This I leave as the proceedings exhibit it; deeming it utterly unworthy of further notice or refutation, beyond what itself supplies.

I have no doubt whatever of the right of the respondent, both to the *Raj* Title and the *Raj* Domain; which right the Deeds of his Predecessors, the Usage of his Family, and the Laws of his country combine to confirm.

I dismiss the appeal; with all costs chargeable to the appellant.

THE 27TH FEBRUARY 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE NO. 95 OF 1845.

Regular Appeal from a Decision of the Judge of Tirhoot, David Pringle, passed December 31st, 1844.

BABOO GUNNEISH DUTT SING'H, APPELLANT, (PLAINTIFF,)

versus

MUHARAJAH KOWUR ROODUR SING'H, MUHARAJAH KOWUR BASDEO SING'H, AND MUHARAJAH KOWUR BABOO KEERUT SING'H, RESPONDENTS, (DEFENDANTS.)

THIS suit was instituted by appellant, on the 29th of July 1839, to recover from respondents a moiety of pergunna Hatee and other lands, valued at 7,07,000 rupees, and other property; estimated in the whole at Co.'s rupees 26,94,416-14-1.

The decision appealed from, is as follows:

The plaint sets forth, that Rajah Madho Sing'h succeeded Pirtab Sing'h, who died without issue, being a younger brother by a different mother; that at different times, when invested with the

Brahminical thread, Madho Sing'h conferred upon his five sons, by four wives, pergunnas as follows: to Kishun Sing'h, Dhurmpore,—who died childless in his father's life time; to Chuhtur Sing'h, Alapore; to Keerut Sing'h, Jubdee; to Govind Sing'h, father of plaintiff, Puharpore Raghoo; to Ramaput Sing'h, Puchye, in anticipation of investiture, which afterwards reverted to the general estate, the holder being adopted into a different family. The four first mentioned pergunnas are now therefore excluded from his plaint. The defendant replies, that these pergunnas were never so conferred by Madho Sing'h, but assigned to the parties holding them, as younger brothers, in accordance with *Koolachar* or family usage, when by a deed of succession made on Madho Sing'h's departure to Benares, in 1214, the *Raj* and domains appertaining thereto, were bestowed on the eldest son, Chuhtur Sing'h, to whom the pergunna Alapore had previously been given at the time of his birth, or *roonamai* (*lit.* shewing his face.) The plaintiff goes upon the fact of his holding the pergunna in his occupancy, as acquired by his father in the manner stated, and therefore forming no bar to his title to sue equal division. The defendant admits the occupancy, but denies the mode of acquisition. In the suit of Keerut Sing'h *versus* Chuhtur Sing'h, the claim to share equally as now advanced by the plaintiff, was dismissed on the ground that he was proved to occupy the pergunna held by him, under Madho Singh's deed of partition, and not in virtue of its being conferred at investiture or *junaô*: therefore, according to the Bywusteh delivered in the same suit, occupancy being taken to prove consent, objection to such partition was now barred. If that deed, however, be good for Keerut Singh's title, it is so for that of the co-sharers consenting. The plaintiff might have pleaded that he was no party to it, and have refused to abide by his father's act, (Vide Macnaghten, Volume II. Page 50,) but such is not his plea; and in the absence of any proof to invalidate the deed of Madho Sing'h, as upheld and established *pro tanto*, by the above judgment, while the deed of gift on his investiture, as produced by the plaintiff, has every presumption of custom and circumstance opposed to its authenticity, he must now be held to occupy under that, and that only; and on the maxim of *factum valet* to be entitled to no more. The judgment on which this conclusion rests, is in accordance with the Hindoo Law, under which the plaintiff sought to make good his title; it is unnecessary therefore, here, to consider the defendant's plea of *Koolachar*, or family usage: that will be done in the suit at the same time to be decided, in which the defendants are opposed as litigating parties. The plaintiff's suit is therefore dismissed, with costs.'

With reference to the before stated connexion between this and the suit No. 50, and to evidence exhibited in that suit generally,

and more particularly to that adduced by Roodur Sing'h, a respondent in this appeal, I do not deem it necessary to enter into a detail on this occasion, which may be found on reference to the case mentioned.—I entirely concur in the view taken of this claim; and dismiss the appeal against the judge's decision, with all costs chargeable to the appellant.

THE 28TH FEBRUARY 1846.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITIONS NOS. 757 AND 758.

IN the matter of petitions of Moonshee Munneerooddeen Mahomed and Ram Lochun Biswas, filed in this Court on the 23d September 1844, praying for the admission of a special appeal from the decision of the principal sudder ameen of zillah Furreedpore, under date the 12th July 1844, reversing that of Mahomed Aman, moonsiff of Chokey Bangha of the aforesaid zillah; under date 19th July 1843, in the case of Osseemoodeen, plaintiff, *versus* Munneeroddeen Mahomed, Ram Lochun Biswas, and others, defendants.

It is hereby certified that the said application is granted on the following grounds.

The plaintiff in this case, alleging that he had purchased Kismut Dyarampoor from the defendant Ram Lochun Biswas, for Co.'s rs. 640-14-11-1-1, and that the other defendant had dispossessed him of eight beegahs of land appertaining to the said Kismut,—Ram Lochun Biswas denied having sold the Kismut Dyarampoor to the plaintiff, on which the moonsiff's jurisdiction was barred, inasmuch as it became necessary in the first instance to try the validity of the title of the plaintiff, purchased as above noticed for Co.'s rs. 640-14-11-1-1. This being represented to the moonsiff he decided the case as a boundary dispute, without reference to the plaintiff's title, he being in possession, and dismissed the claim. On appeal, the principal sudder ameen entered on the whole case, and, revers-

ing the moonsiff's decision, upheld the plaintiff's purchase and awarded to him the eight beegahs of land in dispute.

We consider the plaintiff having come into Court as proprietor by purchase, the moonsiff should not have proceeded in the case when that title was disputed. The principal sudder ameen has decided in appeal, that which was not raised in the lower court. Hence both the decisions are informal. We therefore admit the special appeal, and having had both parties before us, quash the whole of the proceedings, and direct that the moonsiff refer the plaint for the orders of the judge, as being beyond his competency to dispose of.

THE 28TH FEBRUARY 1846.

PRESENT:

W. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 41 OF 1845.

Regular Appeal from the decision of the Principal Sudder Ameen of Beerbhoom.

CHUNDERNARAIN RAI AND BENODE RAM SEIN,
APPELLANTS, (PLAINTIFFS,)

versus

NARAINEE DASSEA, AND OTHERS, RESPONDENTS,
(DEFENDANTS.)

CLAIM for possession of Mouza Bagracunda, lakheraj land, with wasilat; laid at rupees 6,147-15-9.

The original right of the plaintiff to the estate in dispute is not contested; but the defendant, Narainee Dassea, alleges that it was given to her by Chundernarain Rai himself, who is her relation, in Magh 1230; and that she has since held possession under the hibbahnameh written on that occasion; that on the dispute for possession of the muhal being brought before the foujdaree authorities, possession was awarded, summarily, under Act IV. 1840, to defendant.

On the 29th November 1844, the principal sudder ameen of zillah Beerbhoom, dismissed the claim of plaintiff, considering the transfer of the property to defendant sufficiently established.

On the 19th February 1845 the plaintiff appealed to this Court, contending that the hibbanameh filed by defendant was a forgery,

and that he had never been out of possession till possession was given to defendant by order of the foujdaree court.

OPINION.

It appears to me that the plaintiff has not satisfactorily established the fact of his possession after the date of the hibbanameh. He had farmed the estate to Bississur Sing in 1230, before the date of the hibbahnameh. This farm of course held good during its term, or till 1233, and the plaintiffs' *dehat* papers reach only up to that year. The decree of the resumption court of 1836, in which Chundernarain's name appears as defendant, may be sufficiently accounted for, by the circumstance of the defendant being a woman and not well aware of what was going on in the public offices. Moreover as she had not had her name entered in the register of mutations, the suit in the resumption court was of course instituted in the name of Chundernarain, which stood in the register.

On the other hand, there is, in my opinion, ample proof that defendant's farmers and representatives have had possession of the lands since 1233. The hibbahnameh alone would perhaps not be sufficient proof of right, as it has no signature of witnesses; but, as possession under it has been held for upwards of 12 years, there is no doubt that the claim of the plaintiff is barred by lapse of time.—The decision of the principal sudder ameen is therefore confirmed, with costs against appellant.

TO THE CIVIL JUDGES.

The 27th February, 1846. *Register of Deeds.*

IN continuation of the Circular Order of the 12th December, 1845, I am directed by the Court to transmit to you, for your information and guidance, the accompanying copy of a letter (No. 178, of the 28th ultimo,) from the Secretary to the Government of Bengal, explanatory of the principles which should guide the zillah judges in selecting persons for the office of register of deeds.

2. You are requested to observe, however, that although any person whatever may be appointed to the office of register of deeds constituted under Act XXX. 1838, none but covenanted servants and principal sudder ameens are eligible to the office at sudder stations, constituted under the previous regulations; therefore, in nominating persons to Government for the situation of register of deeds, the description of office which has become vacant should be specified.

From the Government of Bengal to the Court, No. 178, *dated* 28*th January,* 1846.

With reference to the recent correspondence with the Sudder Court on the subject of the appointment of register of deeds, and to several applications from zillah judges on that subject which are now before His Honor, I am directed to request that the Court will take an opportunity of instructing the zillah judges that they should be guided in their nomination of officers to fill vacant registrarships by the comparative fitness of the candidates who may present themselves for selection, without regard to any other consideration.

2. It is, in His Honor's opinion, of much consequence that the office of registrar should not be liable to frequent change of incumbents, and for this reason the civil surgeon of a station would usually be a fitter candidate than the covenanted assistant. On the other hand, the civil surgeons do not always possess sufficient knowledge of the native languages to discriminate between different sorts of deeds presented for registry; and on this ground it may sometimes happen that the covenanted assistant is a fitter candidate than the civil surgeon. But there may be at a station individuals, in or out of the service, fitter than either the civil surgeon or the assistant to the magistrate: and when this is the case, and the law may admit of it, the Deputy Governor would not desire that the choice of the judge should be confined to officers in the service, or to any particular branch of the service.

The judges should therefore, in reporting their nominations to Government, explain always that they have adverted to these considerations in making their selections.

(Sd.) F. J. HALLIDAY,

Secretary to the Government of Bengal.

To the Civil Judges.

The 13*th March,* 1846. *List of Vacations.*

The Sudder Dewanny Adawlut notify, for general information, that their Court will be closed on the dates indicated in the annexed memorandum, being the days on which Hindoo and Mahomedan holidays will take place in the year 1253, Bengalee style, and they hereby authorise the closing of the civil courts, in the several districts under their control, for the same periods.

Statement of Hindoo and Mahomedan Holidays in the year 1253, *B. S., corresponding with* 1846-47.

Names of Holidays.	English Month.	Bengalee Month.	Days of the Week.
Dusserah (Gunga Poojah.)	4th June,......	23d Jyestee,......	Thursday.
Usnan Jattrah,...............	9th Ditto,......	28th Ditto, ...	Tuesday.
Ruth Jattrah, ...	25th Ditto,......	12th Assar, ...	Thursday.
Oolta Ruth	3d July, ...	20th Ditto, ...	Friday.
Raksha Bundun, including Shubaburat, ...	7th August,...	24th Srawun, ...	Friday.
Jummo Ushtomee,.........	14th and 15th August, ...	31st and 32d Srawun, ...	Friday and Saturday.
Dussera Vacation, including Mohaloya, Eedul Fetre, Dewalee, Eclipse of the Sun, and Bhydooj,.....................	17th Sept. to 22d Oct, ..	2d Assin to 7th Kartick, ...	Thursday to Thursday.
Juggutdhattree Poojah,	28th and 29th Oct, ...	13th and 14th Kartick, ...	Wednesday and Thursday.
Kartick Poojah,............	14th and 15th Nov., ...	30th Kartick and 1st Ughran,	Saturday and Sunday.
Eedooz Zohah, ...	30th Nov. and 1st Dec., ...	16th and 17th Ughran,......	Monday and Tuesday.
Mohurrum Vacation, ...	21st Dec. to 4th Jany.,	7th to 21st Poos,	Monday to Monday.
Bussunt Punchumee, ...	21st and 22d Jany, ...	9th and 10th Maug, ...	Thursday and Friday.
Akhery Chuhar Shumba,	10th February,	29th Maug, ...	Wednesday.
Sheoratree,..................	13th and 14th ditto, ...	2d and 3d Falgoon,......	Saturday and Sunday.
Futteh Dowazduhum, ...	28th February,	17th Ditto, ...	Sunday.
Dolejattrah, ...	1st to 3d March,	18th to 20th Falgoon,	Monday to Wednesday.
Baronee Usnan...............	15th March, ...	3d Chyte, ...	Monday.
Ramnobomee, ...	25th Ditto,......	13th Ditto, ...	Thursday.
Eclipse of the Moon, ...	1st April,......	20th Ditto, ...	Thursday.
Churruck Poojah, ...	11th and 12th ditto, ...	30th and 31st ditto,.........	Sunday and Monday.

ADVERTISEMENT.

THE publication of the Decisions of the Sudder Dewanny Adawlut, recorded in English, in conformity to Act XII. of 1843, has been directed by the orders of the Right Honorable the Governor of Bengal, under date the 8th January 1845, No. 64.

The Selected Cases now annually published, to serve as precedents and guides to the lower courts in matters of law and practice, will still continue to be published. The object of the present issue is simply to give all possible publicity to the Decisions of the Sudder Court.

RECEIPTS.

Mr. R. Norris acknowledges with thanks the receipt of the sums noted below from the undermentioned Subscribers, being balances for 1845.

G. C. Jerdan, Esq., ...	14	0	0
E. T. Trevor, Esq., ...	14	0	0
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Applications for copies of the Decisions to be made to Mr. Norris, Sudder Dewanny Adawlut.

THE 3D MARCH 1846.

PRESENT:

C. TUCKER,

JUDGE.

PETITION NO. 1032.

IN the matter of the petition of Ram Govind Muzoomdar and Gopal Kishen Muzoomdar, filed in this Court, on the 11th December 1844, praying for the admission of a special appeal from the decision of Mr. Stainforth, judge of zillah Sylhet, under date the 16th September 1844, affirming that of Syed Abbass Ally, principal sudder ameen of said zillah, under date the 2d March 1844, in the case of Bishen Churrun Doss and others, plaintiffs, *versus* Ram Govind, Gopal Kishen, and Rajessuree, defendants. It is hereby certified that the said application is granted on the following grounds.

In this case the plaintiffs sued as the nearest of kin to Rajkishen Doss, the deceased husband of the defendant, Rajessuree, for the possession of the deceased's landed estate, and to cancel the sale of the same by the widow to the two male defendants. The widow admitted the sale; but pleaded her competency to do so, to discharge the debts of her deceased husband, and those incurred by herself in celebrating the obsequies of the deceased, and also to provide for her own maintenance. The principal sudder ameen declared the sale void, because the pecuniary embarrassments of the husband were not proved, and moreover, because Rajessuree was a minor at the date of the sale to the other defendants. By his decision the estate was to be retained by Rajessuree in her possession for her natural life.

Ram Govind and Gopal Kishen Muzooomdars, appealed to the judge, and offered proof of the debts of the deceased Rajkishen Doss; and before the judge issued notice to the respondents, he asked the appellant's vakeel to whom the deceased was indebted; and on his giving a statement of the creditors, he directed the respondents to be summoned. Notwithstanding this, evidence was not received from the appellants on this point; and the judge affirmed the decision of the principal sudder ameen, on the grounds that the widow was not competent to alienate the whole estate of her deceased husband to provide for his obsequies, nor did there appear any necessity for so doing. In support of his opinion, the judge cited the case of Gocul Chund Chuckerbuttee, appellant, *versus* Musst. Rajranee and Joy Gopal Choudry, respondents, published at page 167 of the 2d volume of the Sudder Dewanny Reports. But this case does not apply, inasmuch as the cause assigned for the sale of the deceased husband's estate in that case, was merely the widow's incompe-

tency to manage it, and this was declared by the Hindoo law officers to be an illegal alienation. Moreover the marginal note to the case in question declares the competency of a Hindoo widow to alienate, by sale or otherwise, the estate of her deceased husband, for the obsequies of her husband or for her maintenance.

I consider therefore that the present case has not been sufficiently enquired into; and having admitted a special appeal, I direct that the proceedings be returned to the judge, who will give the appellants an opportunity to establish by evidence, oral and documentary, the facts asserted by them, viz. that the estate was sold to them in order to discharge the debts of Rajkishen Doss, to defray the expence of his obsequies, and to provide for his widow's maintenance.

THE 4TH MARCH 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 40 OF 1845.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Patna, E. DaCosta, November 20th, 1844.

GUNGA PURSHAD AND GOVIND PURSHAD, APPELLANTS, (PLAINTIFFS,)

versus

HURCHURN SOOKUL, HURBAS KOWUR, WIDOW OF BENEE SINGH, FOR SELF AND OTHERS, AND SEEGUNGUN KOWUR, WIDOW OF BYJNATH SINGH, FOR SELF AND OTHERS, RESPONDENTS, (DEFENDANTS.)

THIS suit was instituted by appellants, on the 29th August 1843, to obtain exemption from responsibility in regard to a bond, granted by Benee Singh and Byjnath Singh, to Hurchurn Sookul; and to save their estate from sale in satisfaction of a decree of court, passed against them as parties to the said bond; they having been at the time of execution of the said bond, and at the time of passing the said decree, minors.

The decision, appealed against, is as follows:

'The point at issue, is whether the plaintiffs can be exempted from liability of the debt for which the defendant (Hurchurn Sookul) has obtained a decree against them. I am of opinion that they cannot be exonerated from this responsibility; and must be held, jointly with Benee Singh and Byjnath Singh, the two persons

who executed the bond for themselves and in behalf of the plaintiffs, answerable for the amount; because, though the plaintiffs were minors at the time of the transaction, yet they appear to have been adults when the suit was instituted, and a decree passed against them; a fact which is clearly established by the petition which the plaintiffs themselves presented to the judge on the 5th August 1836, only five months after the decree was passed against them, soliciting permission to bring an action against their guardian and others in *formâ pauperis.* Besides, this decree, from which no appeal was made, is still in force, and cannot be reversed or modified by the institution of another suit *de novo.* Under Construction No. 1129, dated 9th February 1838, no miscellaneous orders passed in execution of a decree can constitute a new ground of action: the orders contained in that decree must therefore be considered as final. The precedents of the cases filed by the plaintiffs, are inapplicable to the present case. Under these circumstances, I dismiss the plaintiffs' claim, with all costs.'

This decision is manifestly unsatisfactory; and the question involved in the case in which it was passed, remains undetermined by any suitable investigation into its merits. It is stated, that 'the appellants were minors at the time of the transaction'—that is, when Benee Singh and Byjnath Singh signed the bond for payment of the amount of which they have been declared jointly responsible; but that 'they were adults when a suit was instituted and a decree passed against them.' This 'is clearly established,' the principal sudder ameen observes, 'by a petition which they (appellants) presented to the judge on the 5th August 1836, only five months after the decree was passed against them, soliciting permission to bring an action against their guardian and others in *formâ pauperis.*'

Now, the suit against them, was instituted on the 31st January 1834, and decided February 25th 1836; and how the presentation of a petition, which in itself contains merely the solicitation recorded, on the 5th August 1836, two years and a half subsequently to the institution, and five months after the decision of that suit, can be affirmed to establish the full age of the same party, at either of the prior periods indicated, I do not comprehend.

It appears, that no appeal was made against the decree; and it does not appear that any review was applied for; either or both of which might have been sought by appellants, if of age at the time of the decision only; if not, and the period of appeal had elapsed before the legal age was attained, the institution of the present suit was the only alternative left to them.

I cancel the decision appealed from, and direct, that the proceedings be returned; and that the points observed upon, and facts set forth, be duly enquired into; and a decision passed, based upon the result of such enquiry. The usual order will issue in regard to costs, stamps, &c.

THE 4TH MARCH 1846.

PRESENT:

C. TUCKER and
J. F. M. REID,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 127 OF 1845.

Special Appeal from the decision of the Judge of West Burdwan.

MAHARAJ MAHTUB CHUNDER, APPELLANT, (DEFENDANT,)

versus

PARUN SIRKAR, RESPONDENT, (PLAINTIFF.)

CLAIM to reduce the jumma of the plaintiff's putnee, on the ground that out of 17 mouzas contained in his putnee, he has obtained possession only of 12, and not of the remaining five mouzas named in the plaint.

On the 16th November 1843, the moonsiff decreed a remission of jumma in favor of plaintiff, considering that he had established his right to this reduction.

On the 10th February 1844, the judge confirmed this decision.

On the 27th May 1845, a special appeal, in this Court, was admitted to try this point, whether the courts were competent to grant the remission of rent of a putnee mahal; and, if not, what remedy should be allowed to the plaintiff for his loss.

OPINION.

In this case, the plaintiff has sued to obtain either possession of certain lands, which he states were included in his putnee, or a remission of putnee rent in proportion to the extent of these lands. The defendant says, if other persons have got possession of these mouzas, he is not answerable, but they. The judge has decreed a remission of putnee rent; and the grounds of admission of special appeal are, that it is doubtful whether such a remission of rent can be awarded legally.

It is not necessary to decide whether a remission of rent can be made under any possible circumstances; but whether it should be made in this case. The plaintiff, in order to establish any claim, must prove that he has not obtained possession of what he bought, and he has not filed the account sale under which he purchased, nor the original putnee lease. It is therefore impossible to say what they contained, or what he actually bought; and he has not there-

fore proved that he has suffered any injury, or loss, or in fact that he is not in possession of all that he purchased. We consider the claim to remission of jumma not established, and dismiss the suit altogether with costs, reversing the decrees of the moonsiff and judge.

THE 4TH MARCH 1846.

PRESENT:

C. TUCKER and
J. F. M. REID,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 278 OF 1844.

Special Appeal from the decision of the Judge of Nuddea.

PUDDUN LOCHUN MULLIK, APPELLANT, (PLAINTIFF,)

versus

MOOKTA MUNNEE GOOPTEA, GUARDIAN AND MOTHER OF HURRI KISHEN MULLIK, RESPONDENT, (DEFENDANT.)

Claim—Rupees 2641-4-3-1, on account of shares of expenses of Doorgah Poojah, Utheet Shewah, and other family religious rites.

THE claim is brought under a hibbahnameh, or deed of gift, on the part of Nund Comar, the deceased ancestor of both parties, and with reference to an ikrarnameh, signed and executed by his five sons, of whom the plaintiff is one, and the defendant the widow of another son. The main point insisted upon by plaintiff is, that in the hibbahnameh of Nund Comar, his property is left to his five sons with certain reservations, one of which is, that the family religious rites shall be kept up according to a certain estimate. The care of keeping up the rites to be vested in the eldest brother living; the expense to be divided equally among the brothers, who are to receive their shares of the proceeds of the estate after this deduction.

On the 24th February 1843, the principal sudder ameen decreed in favor of plaintiff.

On the 25th September 1843, the judge reversed this decision and dismissed the claim, on the ground that the hibbahnameh, or deed of gift, contemplated that the five brothers should live together, and distinctly enjoins this; but that the brothers having separated contrary to their father's desire, the claim on the part of plaintiff, for reimbursement of poojah expenses, cannot now be admitted.

On the 21st September 1844, a special appeal was admitted in this Court (present Messrs. Tucker and Reid) the grounds recorded are :—1st. That the judge's decision is at variance with a former decision of the judge, in special appeal from the moonsiff, dated 18th August 1841, the claim in that suit being founded on the same deed of settlement, and decreed under it:—2d. That the present decision is contrary to the deed of settlement (hibbah) itself.

OPINION.

It appears that Nund Comar first divided his property by a hibbahnameh, dated 1220; but one of the sons, among whom that division took place, died during his father's life-time, and his share reverting to his father, the father, in 1226, wrote another hibbahnameh, making a new division among the remaining five sons. There is no doubt as to the execution of this document, nor as to the validity of it; and further, in an ikrarnameh of the five brothers, dated 11th Kartik 1232, the contents of the hibbah are recapitulated, and the agreement of the five brothers to abide by it and carry it into effect.

It is very true that the terms of the hibbahnameh, indeed of all the three documents above-mentioned, enjoin that the brothers shall not separate; but there is no clause in it to the effect that if they do separate, the deed is to be null and void. It is quite plain from the wording of the deed, that the father, Nund Comar, intended that the poojah expenses should be kept up according to a certain estimate out of the general funds, and the remainder of the proceeds of the property be divided. One of the brothers having obtained separate possession of his share, refuses to contribute to the expense of the family rites, and the present suit is brought to obtain from him the share he should bear in the expense, the whole having been actually borne by the eldest brother, on whom it is incumbent, under the hibbah and ikrarnameh, to keep them up.

In the first place, we consider the decision of the judge opposed to his own decision in the former special appeal from the moonsiff's decree, in which the claim was also for the share of the same poojah expenses, and under the same deed of gift.

In the second, we are also of opinion that the judge's decision, under consideration, is erroneous. The separation of the brothers does not vitiate the hibbahnameh, the provisions of which are still binding, and to be observed as far as practicable. The first object of the document is, that the family religious rites be kept up at the joint expense of the sharers. This is a claim binding on the whole estate, and we consider the defendant's share in it liable for his share in the expenses. We therefore reverse the judge's order, and confirm that of the principal sudder ameen, awarding a decree to plaintiff, with costs against the defendant.

THE 4TH MARCH 1846.

PRESENT :

C. TUCKER and

J. F. M. REID,

JUDGES,

and

W. JACKSON,

OFFG. TEMPORARY JUDGE.

CASES Nos. 169 AND 170 OF 1842.

Special Appeal from the decision of the Judge of Tipperah.

SUDDER BOARD, APPELLANT, (DEFENDANT,)

versus

DILAWUR ALI AND ANOTHER, RESPONDENTS, (PLAINTIFFS.)

THIS is a claim for possession of Sreenugur, Kureempore, Russoolpore, Khord Dilawurpore, Duree Rampershadpore, in Talookah Rampershadpore, laid at 4,000 rupees.

It appears that the Government are auction purchasers of pergunnah Buldah Khal, zillah Tipperah: that the plaintiffs in this case, Dilawur Ali and another, claiming to hold the 5 mouzas mentioned in the present plaint, besides mouza Rampershadpore, as a mocurruree talook within the Government purchased estate, the deputy collector (W. J. Allen) instituted a suit for the resumption and assessment of the whole 6 mouzas. This suit was decided on the 3d July 1837, and mouza Rampershadpore alone given up as a mocurruree talook, at a jumma of 437-3, the remaining 5 mouzas being declared liable to assessment. It is specified in the resumption decree, that the order is passed under Regulation IX. 1825. The Government appealed from that order to the special commissioner, who rejected the appeal, and confirmed the order.

The plaintiffs brought a regular suit in the zillah court to recover possession of the 5 mouzas resumed, but *not* expressly to reverse the decision of the deputy collector.

On the 20th April 1840, the principal sudder ameen decreed in favor of the plaintiffs, awarding possession of the 5 mouzas claimed.

The collector, on the part of Government, appealed to the judge, who, under date 9th March 1842, modified the decision of the principal sudder ameen, and decreed possession of mouza Sreenugur, in addition to mouza Rampershadpore, as included in the mocurruree tenure at the jumma of rupees 437-3, giving possession also

of the remaining 4 mouzas sued for at a jumma of 475 rupees; regarding which, however, he declared the Government might sue to enhance the rent under the regulations.

From this decree both parties appeal to this Court specially, and Messrs. Reid and Tucker admitted the special appeals. The grounds of admission were recorded; but as they were admitted on the file before the issue of Act III. 1843, the case must be taken up on its merits in general, not merely on the recorded grounds of admission.

It would appear that the principal point upon which the decision of this case hinges, has been unattended to by the lower courts: the suit is not expressly laid to reverse the decision of the resumption court, but its object is, really and virtually, the reversal of it; for the plaintiff claims possession, under a mocurruree tenure, of villages which the resumption court has determined to form no part of that tenure. The resumption courts are duly appointed by the law for the adjudication of cases of a particular description, and the case in question comes undoubtedly within that description; the decision of the resumption court is therefore a good and legal judiciala ward, which cannot be questioned in any other court. If there was any error in the decree of the deputy collector, the plaintiff, if aggrieved by it, had the appeal to the special commissioner open to him; this was the course prescribed by the law, and as he neglected to follow it, the decision became final. The Government did appeal to the special commissioner, who, under date the 8th September 1840, confirmed the decision of the deputy collector; and under the provisions of Clause 1, Section 2, Regulation III. 1828, the decision of the court of the special commissioner is final. The following order is therefore passed.

Neither this Court, nor any of the subordinate courts, have authority to interfere with the decisions of the resumption courts, in cases of this description: the resumption courts have determined that only mouza Rampershadpore is included in the mocurruree of the plaintiffs. Their present suit therefore, to obtain possession of the remaining 5 mouzas as part of their mocurruree, is inadmissible; they have been decreed by a competent court to be not included in their mocurruree, but to form part of the mal lands of the Government estate pergunnah Buldakhal.

The plaintiffs should have appealed from the decision of the deputy collector to the special commissioner, but, having omitted to do so, the deputy collector's decision has become final, having also been confirmed by the special commissioner on the appeal of Government.

Ordered,—That the decrees of the judge and principal sudder ameen be reversed, and the claim of plaintiff be dismissed; the costs in both cases of appeal, as well as of the original case, to be paid by the plaintiffs.

THE 4TH MARCH 1846.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 920 OF 1844.

IN the matter of the petition of Goneish Dutt and others, filed in this Court on the 20th November 1844, praying for the admission of a special appeal from the decision of the acting judge of Bhagulpore, under date the 1st August 1844, affirming that of the moonsiff of Soorajghurra, under date the 11th May 1844, in the case of Poknaraiun and others, plaintiffs, *versus* petitioner and others, defendants. It is hereby certified that the said application is granted on the following grounds.

Sobha Chund, the great grandfather, and Lal Beharee, the grandfather of plaintiffs, bought 8 Kanoons of village Maldah, &c. in pergunnah Maldah; their names were in the collector's books from 1196 to 1231 Fusilee, and they received malikana at 10 per cent, besides other produce. In 1225 Lal Beharee died, and plaintiff's father, Khuruck Narain, then had his name registered, and held under similar circumstances, and plaintiffs in succession after him. In 1244 F., in consequence of disputes arising between the heirs of Nowazee Lal, the mokurrureedar of the property, it was sold for the balance of revenue due to Government, when Goneish Dutt and others purchased his rights, and paid plaintiffs malikana up to 1247, but on no specific calculation. As the defendants refuse to pay ten per cent. on the jumma recorded in the collector's office, plaintiffs sue for malikana (after deducting what has been paid them) on 264 rupees, the sudder jumma of the estate, from 1245 to 1249, being rupees 72, 9 annas, 12 gundas, with interest thereon, rupees 15, 13 annas, making 88 Sicca rupees, or Company's rupees 94, 5 annas, 9 pie.

The defendants, in answer, denied that the plaintiffs are maliks, proprietors of the village referred to; they allege, were it so, plaintiffs would have come in in 1196, at the decennial settlement, and proved their proprietory right, or would, under Section 43, Regulation VIII. of 1793, have refused to enter into a settlement, and would in such case have been entitled to 10 per cent malikana from the collector. They pleaded that pergunnah Maldah and certain other pergunnahs, which belonged formerly to the Rajahs Namdar Khan and Ikbal Allee, were in 1196 Fuslee settled with those who petitioned the Government, and they were considered maliks and zemindars; that, under proclamation and orders of the council, the

individuals with whom such settlement was made were declared maliks, and entitled to alienate their proprietary and mokurruree rights; and they denied having at any period paid malikana to plaintiffs.

The moonsiff was of opinion that the plaintiffs' exhibits and some final decrees of court proved plaintiffs' claim; that the proclamation of the 4th November 1790, on which defendants relied, need not therefore be enquired into; that the words "and Maldah" inserted after the words "et cetera" were an interpolation; that the registry of the rent-paying villages in pergunnah Maldah shewed Rajah Ikbal Allee Khan never was proprietor of the village Maldah; that, copies of the notice of sale proved the purchaser bought only a mokurruree right; and that copies of receipts put in by the plaintiffs prove that Nowazee Lall had always paid malikana from 1222 to 1243, and that the said receipts had been given to him as acknowledgments.

The judge, in appeal, affirmed the moonsiff's decree; and a special appeal was preferred against his decision.

It is urged that the plaintiffs are not maliks; that they are not zemindars entitled to malikana in cash, under the provisions of Section 44, Regulation VIII. of 1793, by which zemindars, who declined to engage for the jumma proposed to them at the decennial settlement, can claim malikana; that if they be in fact zemindars of that description, they should apply to the collector under Section 46 of the above Regulation; and that the collector, on non-payment, is the party to be sued.

The lower courts have omitted altogether the investigation of the defendants' pleas that the plaintiffs are not, under the law above quoted, entitled to malikana in cash. The whole question hinges on this point. If the plaintiffs' claims are valid, under Regulation VIII. 1793, the collector ought to have been made a defendant, with whom the right to malikana would have been contested. The decrees are clearly illegal and defective. Let the case be brought on the Court's file, and then returned, through the judge, to the moonsiff, for re-investigation on the points indicated.

THE 4TH MARCH 1846.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 921 OF 1844.

IN the matter of the petition of Goneish Dutt, filed in this Court on the 20th November 1844, praying for the admission of a

special appeal from the decision of the judge of zillah Bhaugulpore, under date the 1st August 1844, affirming that of the moonsiff of Soorujgurra, under date 11th May 1844, in the case of Summun Sing and others, plaintiffs, *versus* petitioner and others, defendants.

It is hereby certified that the said application is granted on the following grounds.

Plaintiffs state that the entire village Maldah Khoord, was the property of Toral Sing, their ancestor. The rent of it is 177 rupees. Our ancestors have always received 10 rupees per cent. malikana on this amount—the defendants have paid part of this. After deducting what has been received from them, Company's rupees 63, 4 annas, principal and interest, is due by them. The defendants denied plaintiffs' right to malikana; denied payment of it; and urged that, under Regulation VIII. 1793, the plaintiffs are not proprietors entitled to any malikana. The moonsiff of Soorujgurra, who disposed of a similar action against the petitioners instituted by Poknarain and others, plaintiffs, decreed for the plaintiffs in this case—the grounds for his judgment being the same in both. The judge, in appeal, affirmed the decision, recording his reasons for so doing in terms similar to his proceeding in the case of Poknarain and others, *versus* the petitioners, on which a special appeal was preferred.

The two cases above referred to are in all respects parallel. The Court's judgment in admission of special appeal in the case of the petitioner *versus* Poknarain, sets forth the grounds on which the decisions of the lower courts are reversed, and is annexed to the record of this case. It must be brought on the Court's file, and returned, for further investigation, to the moonsiff, as directed.

THE 4TH MARCH 1846.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 922 OF 1844.

In the matter of the petition of Goneish Dutt and others, filed in this Court on the 20th November 1844, praying for the admission of a special appeal from the decision of the judge of Bhaugulpore, under date the 1st August 1844, affirming that of the moonsiff of Soorujgurra, under date 21st May 1844, in the case of Hurlal Sing and others, plaintiffs, *versus* petitioner and others, defendants.

It is hereby certified, that the said application is granted on the following grounds.

Plaintiffs claim under purchase from the heirs of Jobraj Sing, a half pie share in 16 annas of Maldah and Maldah Buzoorg. The rent of the village is rupees 264; and the plaintiffs allege they have all along received malikana on that sum from the defendants. After deducting the payments, the sum of rupees 2, 15 annas and 2 pie, principal and interest, is due by them, for which this suit is brought.

The defendants in this, as in two other suits at the instance of Poknarain and Summun Sing, deny plaintiffs' right to malikana. The moonsiff and the judge decreed in favor of the plaintiffs, for the reasons recorded in their decisions, in the cases adverted to—the cases being similar, and the decisions founded on the same principles. The Court's judgment (annexed) in the above cases sets forth the grounds of admission of the special appeal preferred by the petitioner. The same grounds apply to this case. Let the case be brought on the Court's file, and returned, to be retried, as directed, by the moonsiff.

THE 4TH MARCH 1846.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 923 OF 1844.

IN the matter of the petition of Goneish Dutt and others, filed in this Court on the 20th November 1844, praying for the admission of a special appeal from the decision of the judge of Bhaugulpore, under date the 1st August 1844, affirming that of the moonsiff of Soorujgurra, under date the 11th May 1844, in the case of Nihal Sing and others, plaintiffs, *versus* petitioner and others, defendants.

It is hereby certified that the said application is granted on the following grounds:

Plaintiffs claim one anna share, purchased by their ancestors and by themselves, of Maldah Buzoorg, the rent of which is 264 rupees. They state, they have all along received malikana from the defendants. After payments, the sum of 23 Company's rupees, 8 annas, 4 pie, 16 gundas, principal and interest, is due from them, for which this suit is brought. The defendants, against whom three similar actions were instituted by Poknarain, Summun Sing, and Hurlal Sing, deny plaintiffs' right to malikana.

The arguments adduced by the parties in this and the above mentioned cases in support of their pleas, and the grounds on

which the lower courts decreed in favor of the plaintiffs in all four cases, are the same.

The reasons for admission of a special appeal are also the same. The Court's judgment is detailed in their proceeding in the case Poknarain *versus* the petitioners, annexed. Let this case be dealt with as the others.

THE 6TH MARCH 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 255 OF 1844.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Bhagulpore, Mohummud Mâjid Khan, June 25th, 1844.

RAJAH NIRBHEI SINGH, APPELLANT, (PLAINTIFF,)

versus

BURAJ SINGH, AND THIRTY-FIVE OTHERS, RESPONDENTS, (DEFENDANTS.)

THIS suit was instituted by appellant, on the 25th April 1840, to obtain possession of talook Muhsuree, pergunnah Chukâee, from respondents; to cancel an asserted *mokurruree pottah* (or lease in perpetuity) for the same; and for *wasilât* (or mesne profits,) to what amount, not specified. The value of the talook, estimated at Company's rupees 85,000.

An outline of the decision appealed from, will sufficiently exhibit the case which the courts have been called upon to determine.

'The plaintiff states, that in 1186 Fuslee, Ram Singh Raee, Purm Singh Raee, Manick Singh Raee, and Ajeet Singh Raee, ancestors of defendants, obtained a *mustajuree pottah* (or farm-lease) of the talook from Rajah D'hoor'p Singh, plaintiff's father, extending to 1212 F., the jumma (or rent) being 322 rupees, besides *sulâmee*; that in 1213 Fuslee, the Rajah held the lands *khas* (under his own immediate management); and that, in 1214 Fuslee, another *pottah* was granted (by plaintiff) to Purmesur Râee and others, extending to 1227 Fuslee, at a jumma of rupees 343. Documents are filed and witnesses cited to prove the facts. The first *pottah* sets forth that it was granted to Ram Singh and others, at 322 rupees a year, they to pay the revenue regularly, year by year, and to enjoy the produce,—but no mention is made of any year to which the lease was limited; and it does not

appear, except by inference, whether the *pottah* was a common farm-lease, or one in perpetuity; but such a *pottah* can only be regarded as the latter. The plaintiff has no *kubooleeut* (deed of agreement from the lessees) for 1186 Fuslee, by which to support his claim; and the story of a second *pottah* and his own *khâs* management, has been fabricated for the sake of meeting the statute of limitation. If the lands were held *khâs* in 1213, documents would not be wanting in proof of such possession; and as to the new settlement with the old lessees, the petty increase of jumma, from 322 to 343 rupees, furnishes no pretence or motive to such a proceeding. Besides, the witnesses to the asserted *kubooleeut* of 1214 F., contradict each other, so as to render it inadmissible. A *khut* (letter) of 1196 F., from the Rajah to Ram Singh and others, (agreeing to reduce the rent of 1186 F., from 322 to 301 rupees,) filed by the defendants, is denied by appellant, on the ground of Ram Singh not having been then alive; but in the case of Anund Singh, it was stated by Purmesur, that he (Ram Singh) died that very year. That *khut* declares the *jumma* to be, for them and their *furzundân* (descendants) 301 rupees. Decisions in cases arising amongst the defendants, shew the lands to have been regarded as *mokurruree;* and in the magistrate's court at Monghyr this was pleaded, and not denied by the plaintiff. No doubt can be entertained. Besides, setting aside the pretended *kubooleeut* of 1214 F., the dispossession of plaintiff and possession of defendants are proved from 1186 to 1227 F., a period exceeding forty years. The plaintiff's claim is therefore dismissed.'

Without entering into the question of right, as founded upon the *pottah* of 1186 F., it is to be observed, that, admitting the execution and acceptance of that of 1214 F., the occupancy under which expired in 1227 F., upwards of nineteen years—from 1227 F. (1820) to 1247 F. (1840)—elapsed before this suit was instituted. The appellant pleads and shews, that, throughout this period of nineteen years, summary applications to, and enquiries and orders by the courts, were frequent; and his witnesses depose to offers, on the part of respondents, of the payment of all arrears, agreeably to the rents demanded, provided a new lease were granted to them. But allowing the former to have been as represented, it avails nothing; for under the Construction No. 813 (of 1833) no summary proceeding is admissible in determining periods for the institution of suits under the law of limitation; and, as regards the latter, it is proved, by official proceedings of the local authorities, that the rents acknowledged by respondents to be due, under the *pottah* of 1186 and the *khut* of 1196 F.,—301 rupees that is—were, on rejection by appellant, lodged in the civil court, and by it transferred, as deposits, to the district collector, for after disposal.

The appellant denies the law of limitation having any bearing on the case: inasmuch as a proprietor may at any time fix his own rent upon his own lands, and those who decline to hold on his terms, must resign their occupancy: their non-acquiescence cannot affect his proprietary right. Without disputing this (which is nothing, in the present instance, in the absence of an exposition of the whole of what is intended to be involved in it) it is sufficient to advert to what the facts of this case really are. The proprietary right has never been denied: the plea of respondents is based upon it: but the *pottah* to be cancelled, is admitted by the proprietor himself to have been executed by his father, sixty years before the suit was brought; and up to the present moment, the defendants (in whose possession it remains, though subsequent settlements are pleaded by appellant) have never paid any increase upon the rent for which it stipulates as the *only* condition of holding under it. Were any thing wanting, the claim for *wasilât* would supply it.

Such a suit, after such a lapse of time, cannot be recognised: and on this ground, I affirm the dismissal passed by the judgment of the lowor court.

All costs to be paid by appellant.

THE 10TH MARCH 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 103 OF 1845.

Special Appeal from a decision passed by the Principal Sudder Ameen of Tirhoot, Niamut Ali Khan, February 22d 1844; *affirming a decree passed by the Moonsiff of Tegreh, Ali Bukhsh, June 22d*, 1843.

DHOON RHAEE SINGH, BHOOCHAEE SINGH, APPELLANTS, DEFENDANTS, (WITH 10 OTHERS,)

versus

HEERA LAL, OMRAO SINGH (FOR SELF, AND THE HEIR OF PREM LAL) DURSHUN LAL, AND OTHERS, RESPONDENTS, (PLAINTIFFS.)

THIS suit was instituted by the respondents, on the 6th April 1842, to recover from appellants Company's rupees 295-14, the estimated value of grass used for thatching, the produce of the

year 1249 Fuslee, on sixty beegahs of land, situated in mouzah Balnathpore-Koorea; lost to respondents through the acts of appellants.

The appellants held these and other lands under a *pottah* from three of the respondents, for ten years, from 1245 Fuslee, on an advance of three hundred rupees for the lease. In the course of the same year (1245 Fuslee) the lands, which had been held rent free by the lessors, were resumed by Government, and the lessees ousted. After the usual investigation into their alleged rights as proprietors, a settlement was made with the respondents generally, by whom this action was brought, to recover the amount of loss sustained by the continued trespass of appellants' cattle, which had been wilfully driven by them (appellants) into the grass crop the value of which was now sought, with a view to its destruction.

Appellants pleaded their lease, the term of which was unexpired; but this plea was over-ruled by the lower courts; which, with reference to the subsequent settlement made for the lands, between Government and respondents, declared the prior engagement to be no longer in force.

To try this question, the special appeal was admitted; with a notice of further points which the presiding judge considered to require attention, in the event of the order on the first being upheld, viz., the absence of any defined boundaries of the lands, by respondents, and discrepancies in the evidence as to quantity and rate of rent, the lowest estimates of which had been adopted in the decision of the case.

On entering upon the proceedings, a fact was exhibited which would appear to have been withheld from the Court at the time the special appeal was applied for, which gave an entirely new character to the transaction. When the resumption of the lands took place, a settlement was made with the proprietors, as before stated; but they (the lands) were contiguous to the estate of appellants; and it was an object with them, to establish a more certain hold and interest in them than was afforded by their *pottah:* so they resolved to get the old proprietors set aside altogether, and to substitute themselves as lessees with the Government; which they proceeded to accomplish by the offer of a rent nearly double of that already tendered and accepted from the former. This offer, and the machinations resorted to to give it effect, induced a rejection of respondents, who were only reinstated after much trouble and vexation, in establishing their proprietary rights and the paramount claims admitted to go with them. The new settlement was, as above noted, made with the respondents generally—with nine individuals, that is—three of whom only had joined in the lease to appellants. Under these circumstances, that lease had ceased; it had been virtually abandoned by appellants themselves: but in wanton malice at the failure of their schemes to circumvent

the respondents, they collected and drove in, upon this grass, immense herds of cattle, their own and their friends', not once or twice, but systematically, for two consecutive seasons, till respondents had recourse to this and another action to redeem their losses.

The lowest estimate of quantity and rent of land, having been adopted, does not require further notice, than to observe that the claim is for 'the value of a grass crop of sixty beegahs,' which value and extent are deposed to; and that respondents (who only could complain) have made no appeal or objection against the amount adjudged to them—which too was fixed by themselves, and could not have been legally exceeded.

I affirm the decrees of the lower courts, on the grounds on which they were passed; with costs payable by appellants.

THE 10TH MARCH 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 104 OF 1845.

Special Appeal from a decree passed by the Principal Sudder Ameen of Tirhoot, Niamut Ali Khan, February 22d 1844; *reversing a decision passed by the Moonsiff of Tegreh, Ali Bukhsh, January 22d,* 1843.

DHOON RHAEE SINGH AND BHOOCHAEE SINGH, APPELLANTS, (DEFENDANTS,)

versus

HEERA LAL, OMRAO SINGH, (FOR SELF, AND THE HEIR OF PREM LAL,) DURSHUN LAL AND OTHERS, RESPONDENTS, (PLAINTIFFS.)

THIS was the first action resorted to by the respondents under the circumstances set forth in the preceding number, 103. The claim was for Company's rupees 298-14, the amount of injury sustained in 1248 Fuslee. The moonsiff dismissed the suit, for want of evidence to uphold it: but when, three months afterwards, a similar claim was brought, for the year 1249 Fuslee, in another suit, corresponding evidence in confirmation of the facts before pleaded, was deemed conclusive; and the decree was passed in favor of respondents affirmed under number 103.

On appeal to the principal sudder ameen, the moonsiff's dismissal of this suit was reversed; and, entirely concurring in the judgment, I affirm the decree appealed against, with costs payable by appellants.

THE 16TH MARCH 1846.

PRESENT:

A. DICK,

JUDGE.

CASE No. 18 OF 1843.

Regular Appeal from the Principal Sudder Ameen of Zillah Mymensingh.

NUBKOOMAR CHOWDREE AND OTHERS, APPELLANTS, (PLAINTIFFS,)

versus

SOOBURN BEEBEE, AND OTHERS, RESPONDENTS, (DEFENDANTS.)

Ghoolam Sufdur, Pleader of Appellants, Bunsee Budun, Pleader of Respondents.

SUIT for right to new assess a dependent talook laid at 5,200 Company's rupees.

The plaintiffs sue to new assess a dependent talook held by the defendants, on the ground that it is not *istemraree*, or a tenure on a permanently fixed rent; and that although the defendants hold a *dowl-bundobust*, or rent-roll, granted to their ancestor by plaintiffs' ancestors, still it is not hereditary, and therefore of no avail after the decease of those to whom it was given. Further, even if perpetual, it is not binding on plaintiffs, who purchased a portion of their zumeendarry from an auction purchaser, and which was sold for arrears of Government revenue after the *dowl* was given.

The defendants replied, that the plaintiffs' suit was inadmissible, because they had formerly sued for enhanced rent of this very tenure, and their claim was dismissed in the zillah, and by the Sudder Court, and the *dowl-bundobust*, or rent-roll, in their possession, declared valid and perpetual, and that with respect to the plaintiffs having purchased the portion sold for arrears of Government revenue from the auction purchaser, it was false. Two judges of the Sudder had recorded in a decision of another suit of

the plaintiffs for a similar claim, that the plaintiffs themselves were fictitiously the real purchasers,—and therefore they could have no right to break the rent-roll in question.

The principal sudder ameen deeming the permanency of the rent-roll to have been clearly decided in the former case by the Sudder Court; and the point of the plaintiffs having been the real purchasers at the auction sale for arrears of a portion of their own zemindaree, fully established, and recorded in a decision of the Sudder Court, dismissed the claim of plaintiffs.

JUDGMENT.

In dismissing the former suit of appellants against the respondents for enhancement of rent, the sudder judge finally settled the permanency of the rent-roll between the parties,—therefore this suit to new assess the tonure on the ground of its not being a *mokurrurree* or *istemraree* tenure, is untenable by the appellants, heirs of those who gave the above rent-roll. The fact of their having been the real purchasers at the auction sale, in another's name, has also been decided by the Sudder Court. They cannot therefore claim to cancel the rent-roll on that ground; but if they could, it could be only to the extent of their purchase, and not for the whole.

Appeal dismissed with full costs.

THE 16TH MARCH 1846.

PRESENT:

A. DICK,

JUDGE.

CASE No. 19 OF 1843.

Regular Appeal from the Principal Sudder Ameen of Mymensing.

SUIT laid at 10,577 Company's rupees, 1 anna, 1 gunda, for balance of rent from Assin 1237 to Ughun 1248, B. E., due on account of the above talook.

The parties and pleaders are the very same as in the above suit, No. 18 of 1843, and the claim is founded on the same grounds, and is resisted in like manner.

The appeal is therefore dismissed with full costs, as a matter of course, being totally dependent on the former claim.

THE 17TH MARCH 1846.

PRESENT:

A. DICK,

JUDGE.

CASE No. 25 OF 1843.

Special Appeal from the decision of the Judge of Dacca, Mr. J. F. Cooke.

RADHA PURSHAD RAE, APPELLANT,

versus

GOUREE PURSHAD RAE, RESPONDENT.

Pleaders—Bunsee Budun and Ram Pran for Appellant, and Ghoolam Sufdur for Respondent.

SUIT laid at Company's rupees 1021, 3 annas, 5 gundas, 2 cowries, for share of 2 annas, 16 gundas, 1 cowrie of a zumeendaree.

The appellant's statement: He was a sharer in an estate to the extent of 4 annas out of 9 annas, which was sold by public auction for Government arrears, and purchased by respondent. After the sale, the respondent received from him a portion of the earnest money to be paid into the collectorate, and wrote him a deed engaging to let him have the above share of 2 annas, 16 gundas, 1. cowrie, out of the 9 annas, on receiving the balance of the price of the said share. He would not act up to the agreement, and therefore this suit. The principal sudder ameen, Mr. Reilly, tried the case, and, on the testimony of the witnesses to the deed, decreed upon it, deeming the claim not contrary to the law. The judge, in appeal, dismissed the suit, on the ground that the claim was inadmissible, being founded on a transaction contrary to law. This the appellant's pleader contended was not right. The deed had been proved, and judgment ought to have been given accordingly on it; in such a case, the course for the court to take was pointed out in Section 20, Regulation XI. 1822.

The respondent argued, that the deed was a fabrication, and the suit instituted merely to get the sale cancelled; and that the judge decided most correctly.

A special appeal was admitted by Messrs. Tucker and Reid, on account of the extraordinary nature of the suit, and the nicety of the point to be decided.

JUDGMENT.

The appellant in his plaint admitted, and there is mention of it in the deed or *ikrarnameh* on which the claim is founded, that the

parties had come to an understanding before the sale, that respondent was to purchase, and appellant to share to the extent claimed. The appellant was one of the defaulters prohibited by law from purchasing; therefore the transaction was to all intents and purposes an infraction of the law, by evasion, and any claim originating in it untenable in court. The judge very properly did not enter into the truth of the deed or otherwise: the courts should decide no point, unless obliged. His decision is confirmed, and the appeal dismissed with full costs.

THE 17TH MARCH 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 24 OF 1845.

Special Appeal from a decision passed by the 2d Principal Sudder Ameen of Tirhoot, Ushruf Hosein, November 30th, 1843; *affirming a decision passed by the Sudder Ameen, Sulamut Ali Khan, July 6th,* 1842.

RAM PURSHAD CHOWDHREE, SHEO PURSHAD CHOWDHREE, BHOLANATH CHOWDHREE, AND GOOR PURSHAD CHOWDHREE, APPELLANTS, (PLAINTIFFS,)

versus

JAFUR HOSEIN KHAN AND EIGHT OTHERS, RESPONDENTS, (DEFENDANTS.)

THIS suit was instituted by appellants on the 6th July 1841, to recover from respondents Company's rupees 745-8-3, being principal and interest of a sum of money (601 rupees) advanced on a lease of certain lands in Mouzah Chandpoor, from which lands appellants were dispossessed before the debt was satisfied, in consequence of the sale of respondent's estate for arrears of Government revenue.

The sudder ameen rejected the claim under the law of limitation. The principal sudder ameen over-ruled this; but dismissed the suit, because the *dustâvees zur-i-peishgee* (deed or lease on the advance) did not contain any condition making the proprietors responsible under the circumstances attending the loss of the village, and because such loss did not involve any fault on their part.

The Court were of opinion that such a decision was contrary to the practice of the courts in such cases, which hold a borrower

responsible for a debt contracted on the security of land, till it be proved that such debt has been satisfied from the produce of the land, or by other means. The special appeal was admitted on this point.

It appears that the sum stated, was advanced to Ahmud Hosein and Mân Bibi, of whom the respondents are heirs, by the father of the appellants, Myaram Chowdhree, for a *pottah* extending over three years, 1230 to 1232 Fuslee, and for such further period as should be required to liquidate the advance made for it; that Myaram died—when, is not stated, nor the consequences of his death; that in 1247 Fuslee, the estate was sold by Government; and that the year following the suit was instituted.

The sudder ameen, taking the deed as a bond for money advanced on land security, and reckoning from the end of 1232 Fuslee, the last year of the specified period of lease, to 1248 Fuslee, in which the suit was instituted, declared the law of limitation to bar the courts' cognizance of it, and dismissed the claim.

The principal sudder ameen overruled this; but affirmed the dismissal for other reasons, as just stated.

The appellants, protesting against the grounds of these decisions, obtained admission of their appeal; and the case has now come on in due course to be disposed of.

Against any interference with the orders of the lower court, the respondent pleads, as before, the law of limitation, with reference to the fifteen years between 1232 and 1248 Fuslee; the more than satisfaction made for the debt, by the usufruct of the land during the sixteen years of appellants' occupancy (1230 to 1247 Fuslee); and the non-production of the accounts by appellants, required by Section 11, Regulation XV. 1793.

The law of limitation clearly does not apply: the deed, or pottah, stipulated for possession (after 1232 Fuslee) till the advance should be satisfied; and under this clause possession was held, unopposed, so far as any thing appears to the contrary, till 1247. In 1248 the suit was instituted. Nothing beyond this has been established or enquired into; and the case must be returned to be disposed of on its merits.

It is ordered, therefore, that the decision appealed from, be cancelled; and that the case be returned and restored to the file, and re-tried *de novo*, upon such evidence as the parties may produce respectively to the facts to be substantiated.

The usual order as regards stamps, &c.

THE 17TH MARCH 1846.
PRESENT:
C. TUCKER,
JUDGE.

PETITION No. 1059 OF 1844.

IN the matter of the petition of Soorut Narain Sing, filed in this Court, on the 20th December 1844, praying for the admission of a special appeal from the decision of Syed Monowur Aly, principal sudder ameen of zillah Shahabad, under date the 27th September 1844, reversing that of Molovee Mazoom Hosaen Khan, sudder ameen of the said zillah, under date 6th July, 1844, in the case of Soorut Narain Sing, plaintiff, *versus* Baboo Coomar Sing, defendant.

It is hereby certified that the said application is granted on the following grounds.

The petitioner brought his action on 11th March 1844, to recover a certain sum of money, with interest thereon, due on a bond, dated 2d Kartick 1239 F., corresponding with 23d October 1831. But the amount was not payable till the end of Bysack 1239 F., corresponding with the 14th May 1832. Consequently the cause of action did not commence till the latter date. The principal sudder ameen reversed the decree of the sudder ameen, which was in favor of the petitioner, on the grounds that calculating either from the date of the bond, or from the date from which the amount sued for became due, more than twelve years had elapsed ere the suit was instituted. This is clearly an error. Calculating from the latter date, which is the correct mode, viz. 14th May 1832, there remained two months and three days to complete the period of twelve years, when the suit was filed, viz. 11th March 1844.

The special appeal is, therefore, admitted, and the case remanded to the principal sudder ameen for decision on its merits.

THE 17TH MARCH 1846.
PRESENT:
C. TUCKER,
JUDGE.

PETITION No. 1067.

IN the matter of the petition of Roop Chund Pandy, filed in this Court on the 27th December 1844, praying for the admission of a special appeal from the decision of Mahomed Rafiq Khan, additional principal sudder ameen of the city of Patna, under date the 27th September 1844, reversing that of Mirza Mahomed Suddeek

Khan, sudder ameen of said zillah, under date the 16th July 1844, in the case of Musst. Mukundy, plaintiff, *versus* Roop Chund Pandy, defendant.

It is hereby certified that the said application is granted on the following grounds:

The plaintiff in this case, Musst. Mukundy, sought to annul the sale of a decree, obtained by her deceased husband, to the defendant. The fact having been established, and the process directed to be observed on such occasions, by Construction No. 1341, having been duly observed, the sudder ameen dismissed the claim. On appeal, the additional principal sudder ameen reversed the decision of the lower court, on the grounds, that the transfer of the decree to be legal should have been made by a regular bill of sale on a stampt paper of requisite value. This opinion being in direct opposition to Construction No. 1341, which recognizes such transfers by mere endorsement, the special appeal is admitted, and the case remanded to the additional principal sudder ameen to be tried on its merits.

THE 18TH MARCH 1846.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES,

and

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 225 OF 1843.

Regular Appeal from the decision of the Principal Sudder Ameen of Beerbhoom.

MUSST. NUJUMOONISA, KEESHUBNATH RAI AND OTHERS, APPELLANTS, (DEFENDANTS,)

versus

SHAIK MAHOMED BHEEKUN, RESPONDENT, (PLAINTIFF.)

CLAIM: Possession of Lots Lukkipore, Akburpore, and Lutgurria, with their mozafut and dependencies and mesne proceeds from the 6th Asin 1247, the date of purchase by plaintiff, also to set aside certain putnee, durputnee and ijareh claims set up by defendants in opposition to plaintiff's claim.

Suit laid at rupees 7,990-7.

The plaintiff stated that he had purchased the estate in question of Musst. Rujuboonisa, one of the defendants; but, on trying to

obtain possession, the other defendants opposed him on the ground of having previously obtained putnees and a farm of these lands from Rujuboonisa. The plaintiff asserted that these putnees, &c. were fraudulent:—one, the principal one, being in favor of Nujumoonisa, second wife of the father of Rujuboonisa, and that the whole had been written in order to defraud plaintiff of the right acquired by his purchase.

On the 17th July 1843, the principal sudder ameen decreed in favor of plaintiff, with some reduction in the amount of mesne proceeds. The appellants, dissatisfied with this award, brought a regular appeal to this court, and the case being brought before Mr. E. M. Gordon, was by him referred to a full Court.

Opinion.

This is a claim to obtain possession of 3 lots of lands, which were purchased by the plaintiff from defendant by private contract. The date of the Kewalah is 6th Asin 1247, or 20th September 1840; but, previous to this, the lands in question had been attached by the Court, with a view to sale in satisfaction of a decree held by the plaintiff against the defendant, Rujuboonisa, in case No. 94, passed by the principal sudder ameen. The attachment took place and was reported by the nazir on the 15th October 1838. The defendants do not object to claim for possession, but plead that the lands had been previously let in putnee and farm; but, on looking at the dates of the putnee kewalahs, we find they are 17th Sawun 1246 (1st August 1839) and 9th Bhadoon 1247 (23d August 1840) both subsequent to the attachment; the putnees are therefore both illegal. Of the farm there is no legal proof; no lease having been produced, but merely an umulnameh bearing no stamp. These 3 claims of defendants are therefore untenable. The defendant could not let in putnee after attachment of her rights in execution of a decree. The opposition of the defendants is therefore illegal and unjustifiable, and we confirm the decree of the lower court, awarding the claim of the plaintiff, and declaring the 2 putnees and the ijareh null and void; there is reason to believe that they are also fraudulent. The objection raised against the suit, that it includes several different objects, upon which ground the appellants claim that the plaintiff be nonsuited, is not in our opinion made out. There is nothing objectionable in the form in which the suit is brought: the property being one and the same, and held under the same title, that of purchase by private contract. Costs against appellants.

THE 19TH MARCH 1846.

PRESENT :

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 202 OF 1843.

Regular Appeal from decision of Principal Sudder Ameen of Nuddeah.

GYANPUTTEE BANOORJEA, DEFENDANT, (APPELLANT,)

versus

SUROOP CHUNDER SIRCAR, PLAINTIFF, (RESPONDENT.)

PLAINTIFF states as follows:

I held, under pottah, certain *birmotur* lands belonging to Bhowanee Sunkur Banoorjea, situate in the village of Goaree, Chuklah Mutteearee, built an indigo factory and made a garden thereon, and held them for a long time. On Bhowanee's death, his heirs, Sotragoon Banoorjea and Shamatonnaie Banoorjea, gave me a farm of these lands on the 29th Assin 1229, for 11 years, at 206 jumma, on advance of 1200 rupees. The jumma was to be set off against the loan and interest thereon, at 12 per cent.; on payment of 116 rupees, amount due by me at close of the farm, it was to be relinquished. The two last named individuals, on ikrars dated

10th Maugh 1231,	borrowed......	357 Rupees.
14th Assin 1233,	,, ...	234 ,,
26th Kartik ditto,	,, ...	500 ,,
17th Jheit 1234,	,, ...	80 ,,

Making a Total......Rs. 1171

Again being in want of cash, they, on the 15th Srabon 1234, borrowed from me a further sum of 1174 rupees; these two sums, with interest 782 rupees, amounted to 3100, on account of which a second farm was given me for the term of 24 years, commencing 1240 to 1263, on the same jumma, 206 rupees; and it was to be carried to account in liquidation of the loan. The four ikrars, as above, were returned by the defendants with their signatures torn off. I have from the first pottah to the commencement of the second, and on the strength of the second, continued in possession. Mr. Harris,

in collusion with defendants, got a farm in the name of his servant Gooroo Doss Roy, and began to oppress the ryots, who applied to the foujdaree court. The joint magistrate however upheld Mr. Harris's possession, and ordered me to sue in the civil court. I held the farm under the second agreement for 5 years from its commencement, and the defendants cannot oust me. I sue, estimating my action at 5299 rupees 15 annas 8 gundahs 3 cowries, to recover possession of the farm; to have the question of the advance of 3100 rupees enquired into, and for 1662 rupees, 11 annas, 10 gundahs, mesne profits, up to the date of plaint, and pray also for mesne profits up to date of regaining possession.

Answer of Jugdissore and Gyanputtee, dated the 31st January 1842.

On the expiry of plaintiff's farm in 1239, we held the village Goaree in our own possession up to 1243. Plaintiff wished to renew his farm at his former jumma, viz. 206 rupees; but we had increased the proceeds of the lands, and therefore refused his offer; and in 1244 gave a farm of them at 235 rupees jumma, to Mr. Harris, in the name of his servant Gooroo Doss Roy, for 12 years. We never took any money on the dates specified in the years 1231, 33, and 34. Our khas possession from 1240 to 1243, will be established by the jumma wasil bakee papers put in.

Answer of Mr. Harris, in support of the above.

The principal sudder ameen passed judgment on the 22d June 1843.

The points to be decided, he held to be the following: 1st, whether the pottah dated the 15th Srabon 1234, was good; and 2d, was the plaintiff in possession of the disputed land from 1240 to 43 on the strength of that pottah. He was of opinion this was established, for the following reasons.

1. The evidence of Anund Chunder Kur, Jadhob Chunder Bose, Gireedhur Biswas, and Madhob Chunder Biswas, proved a farm was given by Sootragoon and Shamatonnaie in 1234, to commence in 1240, and to run to 1263, on advances made to them.

2. Defendants admit plaintiff's farm and his possession up to 1239, but they allege khas possession from that period to 1243. This however is not proved; for copies of petitions presented by the ryots in the foujdaree court, prove plaintiff's possession up to 1243.

3. In a case in the foujdaree court in which Mr. Harris was one of the parties, Hurris Chunder Mittre claimed 35 bigahs of land; and filed copy of a pottah dated in 1241, and also receipts for 1241-42-43, given him by Bykaunthnath Biswas, plaintiff's gomashtah, and his possession was in consequence upheld; moreover, when disputes arose between Mr. Harris and the plaintiff in the foujdaree court in 1244, the defendants never mentioned they had held in khas possession up to 1243, which they ought to have done.

4. The jumma wasil bakee papers and evidence put in by plaintiff prove his possession from 1240 to 1243.

5. The papers produced by the defendants to prove possession from 1240 to 1243, have been altered to give them an appearance of age: and as to Bykaunthnath Biswas' evidence in favor of the jumma wasil bakee papers put in by the defendants, it avails them nothing; for, in Hurris Chunder Mittre's case, above alluded to, the pottah and receipts which he filed were declared to be signed by Bykaunth Nath Biswas: he is in collusion with the defendant. The mesne profits, rupees 1662, claimed, are not proved, but it is shown that Mr. Harris got the farm at rupees 235 per annum from 1244. Plaintiff is entitled to that amount annually from the last half year of 1244 to the end of 1249, being rupees 1292, 8 annas; and to possession of his farm, with costs and interest on both from this date to date of realization.

By the Court.

This action is brought to set aside an order of the foujdaree court, passed on the 22d November 1837, under which the defendant, Mr. Harris, holds possession of the farm given to him by the other defendants. The principal sudder ameen has very properly laid it down as a principle, that the proceedings of the magistrate's court are not of themselves sufficient proof in a civil court on which to ground a decree; and has, in the course of his investigation, tested, and, after examination, rejected, all the proof adduced by the defendants, originating in the proceedings of the magistrate. But he has, at the same time, without any hesitation and without any investigation, admitted and founded his decree in favor of the plaintiff on similar foujdaree proceedings put in by him; an inconsistency which the Court cannot but notice with censure. On the merits of the case, the Court observe that sundry exhibits have been filed, which the parties, respectively, have supported by their witnesses. The case is one of some difficulty, and must be judged of under the circumstances by probabilities. They are of opinion that the plaintiff has failed to make out his case; that it is for him, in the first instance, to prove his claim; and that, taking every thing into consideration, greater weight is due to the pleas and evidence for the defence than to the statements of the plaintiff. They accordingly decree in favor of the appellants, reverse the decision of the lower court, and charge all costs to the respondent.

THE 19TH MARCH 1846.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 95 OF 1844.

Special Appeal against the decision of the Principal Sudder Ameen of Hooghly.

SIDHEE REYZA ALLEE, (DEFENDANT,) APPELLANT,

versus

SYED KEERAMUT ALLEE, MOOTWULLEE OF THE IMAM BARRA OF HOOGHLY, (PLAINTIFF,) RESPONDENT.

PLAINTIFF states the great-grandfather of the defendant, Sidhee Mirjan, was a slave of Munnoo Jan Khanim and Mirza Sullah-oddeen Mahomed Khan, and resided with other slaves in the premises attached to the Imam Barra. Sullah oddeen gave him 10½ cottahs of land and a house in Imam Bazar for his residence, the proceeds of which were always spent in the mohurrum festival. On his death Sidhee Kheiratee occupied the house and premises, and was in possession of them during the lifetime of Munnoo Jan Khanim, and also during the period when Hajee Mahomed Mohsin, and Rujjub Allee Khan and other mootwallees had charge of the Imam Barra. On the 3d of December 1836, Kheiratee died, leaving his grandson, the defendant, who was made acting darogah of the cook-room, he was a slave born in the Imam Barra. On the 12th June 1839, I dismissed him for bad conduct and for thieving. Kheiratee, at the time when there were disputes regarding the appointment of a mootwallee, added 5½ cottahs of land to his holding. As I have dismissed the defendant, he is no longer entitled to occupy the house and land, I wish to build on it, but he refuses to vacate. I therefore sue him for the house and 16 cottahs of ground at the value of 700 rupees.

Defendant in answer, after much irrelevant matter, urged that his possession and that of his ancestors during four generations was admitted, that Sidhee Mirjan was not a purchased slave of Munnoo Jaun Khanim and Sullah oddeen—that he came from Persia, and they brought him up as their child, and had him married to a daughter of a Syed, in the Hooghly district; that he was made a darogah of the Imam Barra, and that on the 5th Bysack 1164, eight years before the Government acquired their rights, Sullah oddeen gave Mirjan 7½ cottahs rent free, from which period to the present date, 82 years have elapsed—that from the year 1213, when Hajee Mahomed Mohsin set apart the property as an

endowment, six mootwallees have had charge of it, none of whom have ever claimed the disputed land, either from him or his ancestors. On the death of Sullah oddeen, his, defendant's, grandfather, applied to Munnoo Jan Khanim for some waste land which he wished to join to his own land; but she on the 17th Chyte 1206, gave 8½ cottahs of lakhraj land to him in perpetuity, under a deed duly sealed with her seal and signed by Hajee Mahomed Mohsin, her brother, and attested by witnesses; from which time up to the present, 39 years have lapsed, and that plaintiff's claim is invalid under Section 3, Regulation II. of 1805, and under the Circular Order dated the 9th September 1836. He finally urged that his sunnud for the lakhraj land was duly registered, but it bore a date 1164 B. S., before the rule of the British Government; and that under Section 14, Regulation III. of 1793, the action was barred.

The sudder ameen on the 4th August 1840, dismissed the suit on proof of the possession of the defendant, and his ancestors for a course of years, and as it was shewn that three proprietors and several mootwallees had never disturbed their possession.

The principal sudder ameen, on the 19th July 1843, amended the decision of the sudder ameen on the following grounds.

The defendant in his answer admits he was brought up by Sullah oddeen and Munnoo Jaun Khanim, moreover a list of slaves and of slave girls which plaintiff has filed shews that Mirjan was a slave of the Imam Barra, of which plaintiff is the mootwallee. The evidence of witnesses also proves that defendant and his ancestors were servants, "Khadims," of the Imam Barra. It is difficult, adhering to the Mahomedan Law, to prove a man a slave—but the defendant to a certain extent admits he was a dependent of the party represented by plaintiff.

The plaintiff lays claim to 16 cottahs of land and a house, of these the defendant declares himself entitled to 7½ cottahs and the house, under a deed of gift from Sullah oddeen, dated 5th Bysack 1164; this bears the signature of "H. Richards," 1783 A. D. It appears from a report furnished by Gungaram Paulit, the karkoon of the bauzee zumeen seristah, that Mr. Richards was before and after that period register and collector in that office; and as the lands have for upwards of 60 years been in the possession of the defendant and his ancestors, plaintiff cannot now claim, and the sudder ameen's decision as regards this land must be upheld.

The hibbah nameh dated 1206, for the remaining 8½ cottahs of land is not proved; the witnesses produced are not witness to the deed, they speak from hearsay. There is no specification that the gift is in perpetuity, and it bears no official signature. The text of the deed runs in the name of Munnoo Jaun Khanim; the seal is in the name of Munnee Jaun; on these grounds I consider this document to be a forgery; it is on plain not stampt paper as required. Though 39 years have lapsed since the exe-

cution of the document, as it is apparently a forged one, the defendant cannot be said to have been in possession as a proprietor. The plaintiff's witnesses prove these 8½ cottahs did belong to the Imam Barra, and the defendant does not deny this; if he and his ancestors have been in possession for 39 years as dependents of Sullah oddeen and Munnoo Jan, their possession must be held to be that of the last mentioned, and of the Imam Barra in succession to them. The lands were pro tempore in possession of the defendant, not however by right of proprietorship; his service having ceased he cannot retain them. If more than 12 years have lapsed under the above circumstances, by Clause 4, Section 3, Regulation II. of 1805, defendant has no right, and the sudder ameen's order regarding this land must be reversed. I therefore decree for the appellant, the mootwallee, 8½ cottahs as per the boundaries laid down in the hibbah nameh, and uphold the possession of the 7½ cottahs in that portion of the land claimed.

A special appeal was admitted by Mr. Tucker on the 27th of February 1844, on the grounds stated in his certificate of that date.

The decision of this case turns entirely upon the nature of the defendant's possession. He claims the land, for which the appeal is preferred, by right of gift, hibbah, from Munnoo Jaun Khanim, dated 1206—this deed was not proved before the principal sudder ameen; on the contrary, it was established that the defendant and his ancestors were all along servants, Khadim, of the Imam Barra, and that as defendant was dismissed from service by the plaintiff, the mootwallee of the establishment, he was no longer entitled to the portion of ground attached to it. The fact must be admitted as recorded in the lower court's judgment—and cannot be questioned in special appeal. I therefore dismiss the appeal with costs.

THE 21ST MARCH 1846.

PRESENT:

R. H. RATTRAY and
C. TUCKER,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

CASE NO. 155 OF 1843.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Shahabad, Munowur Ali Khan, April 11th, 1843.

RAMNATH SINGH, APPELLANT, (DEFENDANT, WITH RAM GHOLAM SINGH,)

versus

KAZIM HOSEIN KHAN, RESPONDENT, (PLAINTIFF.)

IN this suit, which, in the first instance, was instituted in the court of the sudder ameen, on the 10th August 1840, respondent sued to recover from appellant and Ram Gholam Singh, 196 beegahs, 2 beeswas, and 6 dhoors of land, situated in mouzah Jumooah, pergunnah Dunwar, with *wasilat* (or mesne profits) from 1245 to 1249 F. The value of the land estimated at rupees 7530-7-6 and the *wasilat* at 2402-0-6; total, rupees 9932-8-0.

The plaint sets forth that on the eastern boundary of mouzah Jumooah (respondent's estate) lies Bodhol; on the south, Kodaree, the property of Ram Gholam Singh; on the south-west, Nad, belonging to Dewan Ramnath Singh (appellant); the eastern boundary of Jumooah, formed by a high-road, on the other side of which is Bodhol, belonging to Bhoop Singh and others,—which has been established by a decree of court, as well as by arbitration; to the west of the high-road are some *bur* and *mhoweh* trees, on the north of which is a bridge, and near the road side, a little south, the remains of a *peepul* tree; to the west of that tree, is an old *bund*, crossed by a cow-path; to the south of all these, is a tract of sand which has never been under cultivation, which forms the southern boundary of Jumooah, Kodaree lying to the south of it again; to the north of this sand, are the cultivated low lands of Jumooah; to the south-west of the *bund* above-mentioned, are two trees, a *bur* and a *peepul;* a line running north from the *peepul* tree, touches the southern boundary of Korop; to the north-east and south-west, are the lands of Jumooah; to the west of the line and south-west of the

two trees, are the Invalid lands, and the assessed lands of Nad. In the month of Kartick 1245 F., Ram Gholam Singh's people interfered with respondent's cultivation of some thirty beegahs, lying west of the high road and bridge and east of the old *bund*, and turned off his ploughs; on preferring a complaint, Ram Gholam Singh denied any breach of the peace, and asserted that the land belonged to his village (Kodaree), and Ramnath Singh, in collusion with Ram Gholam, claimed this land also, as well as more of Jumooah, as belonging to Nad; the darogha was ordered to prepare a map; on his proceeding to do which, the people of Ram Gholam and Ramnath pointed out, as theirs, land in excess of the above-mentioned thirty beegahs; respondent appointed an attorney to conduct the case, when appellant proposed an amicable adjustment; and during the negotiation, the suit for possession, under Regulation XV. (of 1824) was struck off the file; which proceeding was affirmed on appeal: respondent therefore now sues to recover seventy-eight beegahs of land, at a valuation of ten rupees a beegah.

Appellant answers, that the boundaries exhibited by respondent, are incorrect; those between Jumooah and Nad are formed by a ridge, running irregularly, east, from the north-east angle of the *bund* at Noktrashee, the village of Sheochurn Tewaree, as far as the high road: the lands to the south of that ridge belong to Nad, and those to the north, to the Invalid mouzah of Korop, and to Jumooah. A long complicated detail follows (as confused as that set forth by respondent) which need not be introduced; the object of the whole being to establish the fact of the above ridge being the dividing boundary of the two estates.

A person was deputed by the sudder ameen to make a local enquiry, who, upon the evidence of individuals unconnected with the parties, prepared a map, or plan, of the estates and intervening land contested, which however was not satisfactory; and the nazir of the court was sent out to see what he could do. After hearing such evidence as the parties respectively had to produce, he also prepared a map; when, instead of 78 beegahs of land, the boundaries claimed by respondent were found to comprehend 196 beegahs, 2 beeswas, and 6 dhoons; and, on the 18th July 1842, the sudder ameen directed him to file a supplementary plaint for the 118 B, 2 B, 6 D, in excess of the quantity already sued for. On the 29th of the same month, this was done; a claim for wasilat from 1245 to 1249 F. being added. This raised the amount at issue from 780 rupees to 9932 rupees, and eight annas; which being beyond the sudder ameen's competency to try, the case was transferred to the principal sudder ameen; who, after taking the further evidence of such witnesses as the three parties to the suit wished to be examined, adopted the nazir's map, and decreed the whole of the land claimed; with *wasilat* at 1 rupee 4 annas per beegah, amounting to rupees 822-0-6. Of the land thus decreed, 19 B. 15 B. lie to the east of

the high-road above mentioned; which, with a further quantity defined in the nazir's map, on the western side of that road, constitute the portion adjudged against Ram Gholam Singh.

Now, Ram Gholam Singh has not appealed; and the decision, as regards him, cannot be interfered with, but must be upheld, according to the map; which also defines what was decreed against the appellant, Ramnath Singh.

As regards the latter, the Court find, in the first place, that there is nothing to shew any original occupancy by, or dispossession of respondent; nor, except the general broad assertion of his witnesses, that the land claimed by him belongs to Jumooah, is there any thing whatever in proof of his right to what he seeks to obtain. These witnesses again, are met by those (more in number) of appellant; who swear, as positively, to the land being within the limits of Nad.

Under such circumstances, the Court cannot uphold the judgment passed against appellant; which they therefore reverse, with costs payable by respondent.

THE 23D MARCH 1846.

PRESENT:

A. DICK,

JUDGE.

CASE No. 68 OF 1843.

Regular Appeal from the decision of the Principal Sudder Ameen, Moulvee Abookhyr Mohumud Alee, of Zillah Tipperah.

BUNSEE RAM SHAH AND KASHEENATH SHAH, APPELLANTS, (DEFENDANTS,)

versus

NEEL MUNEE CHOWDRAIN, WIDOW OF RAS BEHAREE RAEE, MOTHER OF KALEE KOOMAR RAEE, MINOR, RESPONDENT, (PLAINTIFF.)

Pleaders—Raj Narain for Appellants, and Tarik Chundur for Respondent.

THE respondent's husband let his zumeendaree in farm to Bunsee Ram Shah, appellant, who engaged to pay him a specified amount out of the gross collections, monthly, which he failed to do: and hence this suit. The appellant, Kasheenath, was included in the suit, on the ground that he was a partner in the lease, though the deeds were written out in the name of Bunsee Ram Shah alone.

Bunsee Ram founded his defence on the assertion, that he had been deceived as to the amount of the gross collections, and that he

had a counter deed, in which the husband of respondent agreed to deduct any deficiency there might be in the amount of the proceeds from the estate, and allow for them in adjustment of accounts.

It appeared in proof, that the appellant had sued for recovery, on his deed, of the deficiency he alleged, and his suit had been dismissed; and it appeared that Kasheenath held a bond of the respondent's husband, which was to be paid out of the amount payable to respondent's husband by Bunsee Ram. The principal sudder ameen, therefore, deeming Kasheenath a partner in the lease, decreed against both brothers.

In this Court Kasheenath contended that he had nothing to do with the lease, and that he was not liable.

The defence of Bunsee Ram is wholly untenable. Had he discovered the great deficiency which he avers, he should have immediately thrown up his lease, declaring the cause, and not have gone on quietly for the whole period of ten years and more, without paying what he had stipulated. As however the proof of Kasheenath and he being co-partners in the lease, and all other mercantile and money transactions, is by no means complete, the case is remanded for the principal sudder ameen to call for further evidence on that point, and then decide.

THE 23D MARCH 1846.

PRESENT:

A. DICK,

JUDGE.

CASE No. 77 OF 1843.

Regular Appeal from the decision of the Principal Sudder Ameen, Ram Mohun Raee, of Zillah Midnapore.

RAJAH LUKEE NARAIN RAEE, APPELLANT, (PLAINTIFF,)

versus

JUGGUT NARAIN DAS AND MOOST. KISHOON PIREEA, WIDOW OF RAJ NARAIN DAS, RESPONDENTS, (DEFENDANTS.)

Pleaders—Raj Narain for Appellant, and Gour Huree Banorjeeah and Tarik Chunder Raee for Respondents.

SUIT laid at 42,303-11-5¼, arrears of rent from 1233 to 1246 B. Æ.

This is essentially a claim for rent founded on proprietary right, although the amount claimed is founded on a measurement and local inquiry made by a farmer of the estate in 1232, and a notice accordingly issued under Section 11, Regulation V. 1812. The

dismissal of the suit, therefore, by the principal sudder ameen as untenable, being founded on a notice of the farmer, and therefore of no avail to appellant, is erroneous. He should have entered into a full investigation of the proofs adduced by respondent, Kishoon Pireea, that the lands in her cultivation were held at a fixed rent on *pottahs* not questionable by appellant, and the rent of which had been duly paid up. And if he rejected the local inquiry and measurement, on which appellant founded the amount of his claim, he should have deputed an aumeen, or rather have directed the pergunnah aumeen, to institute a local inquiry into the lands actually in the possession of the respondents, and the rent due on them at the pergunnah rates, or under Section 7, Regulation V. 1812. He should also have taken into consideration the reasons given by appellant for not having sued sooner, and then have rejected, or not, the claim for rent beyond 12 years. The Court further observe, that the principal sudder ameen did depute an aumeen to make a local enquiry after he had recorded that the case was to be decided *exparte;* yet he subsequently allowed the defendant, Kishoon Pireea, to file her answer, and eventually dismissed the suit as untenable, without entering into its merits. These proceedings were exceedingly irregular.

Ordered—That the suit be returned for re-investigation, as above indicated.

THE 24TH MARCH 1846.

PRESENT :

A DICK,

JUDGE.

CASE No. 90 OF 1843.

Regular Appeal from the decision of the Principal Sudder Ameen of Zillah Mymensigh, Jalal oodeen Mahomed.

ROUSHUN KHATOON CHOWDRAIN, (PLAINTIFF,) APPELLANT,

versus

COLLECTOR OF MYMENSINGH, RAM JY RUHA, AND BAMUN DAS BABOO, RESPONDENTS, (DEFENDANTS.)

Pleaders—Gholam Sufdur for Appellant, and Pursun Koomar and Raj Narain for Respondents.

SUIT laid at rupees 7330-15-9-3-2 for possession on ½ ana share of 8 anas of zumeendaree, pergunnah Utteea.

This suit was originally instituted against a person named Meer Saadut Alee, on the ground that the property in question had been nominally sold to him to evade a process of court about to be issued against her, appellant; that the nominal sale took place in 1231 B. Æ. when the property was under the management of the Court of Wards; and that Meer Saadut Alee, who was principal manager of her affairs, used to receive the profits from the collectorate and duly account for them to her until 1241; when the property having been released from the Court of Wards, the defendant, Meer Saadut Alee, assumed possession as actual purchaser. The defendant, Meer Saadut Alee, contended, that the sale was real and not nominal, in proof of which he held the deed of sale, which was duly witnessed, and registered, and mutations made in the collectorate; and he had enjoyed possession for upwards of 12 years, which rendered of itself, the claim inadmissible.

The suit was dismissed by the additional principal sudder ameen, Jenaub Alee, who deemed the sale real, and he also considered the claim inadmissible from lapse of time.

The zillah judge, in appeal, held that the plaintiff having proved receipt of the profits up to the time the estate was released from the Court of Wards, there was no lapse of time, and that the sale was nominal; therefore the defendant, Meer Saadut Alee, must account for the usufruct from the time the estate was released from the Court of Wards. As however the property in question had been sold by public auction, on account of Meer Saadut Alee, who had given it in security, he directed the plaintiff to sue the collector, who sold the property, and the persons who purchased it, for possession.

On this, the purchasers at the auction sale appealed to the sudder court, and the case was heard by three judges, who decided that as the plaintiff had proved receipt of the profits up to 1841, there was no lapse of time, and that the judge, instead of referring the plaintiff to another suit, should have directed her to include the collector and purchasers as defendants in this suit. The case was accordingly remanded, and was tried by the principal sudder ameen, who, deeming the sale real, for the reasons detailed at great length in his decision, dismissed the suit.

In appeal, the appellant's pleader argued, that the sale was nominal, as had been clearly proved by persons present when the transaction occurred, and that the Sudder Court had admitted the receipt of the profits till 1841, and thus done away with the plea of lapse of time. He further contended that if the sale were deemed real, still as the property was then under the Court of Wards, its alienation by appellant was invalid, in proof of which he cited a case in point, decided in the court of appeal of Dacca on 25th February 1823, Nubkant Shah, &c., *versus* Mootee Beebee; and although it might be contended by the other party, that as the estate was

brought under the Court of Wards for contumacy, it did not render the appellant incompetent to alienate, the argument was futile, because the whole of Regulation X. was applicable to every description of persons, who might be brought under its provisions.

The collector and the purchasers only appeared as respondents; and it was argued on their part, that the sale was clearly real to all intents and purposes; and that the estate having been brought under the Court of Wards solely on account of contumacy, the appellant was perfectly competent to alienate, and that it was so understood by the revenue authorities, was evident from their having allowed the mutations in the Government registers consequent on the sale, and accepted in security the property in question from Meer Saadut Alee, and cited as a case in point, Jan Khatun, *versus* Khwaja Alimullah, Sudder Dewanny Adawlut reports, volume v. page 240.

JUDGMENT.

There are four points for consideration in this case. 1st. Is the suit inadmissible from lapse of time? 2d. Was the sale in question real or nominal? 3d. If real was it invalid, from the circumstance of the property having been at the time under the Court of Wards? 4th. If nominal, and for the purpose of evading process of law, as stated by appellant, can a claim so founded be upheld in a court of law? Three judges of the Sudder Court have already decided that the profits of the property sold, were duly paid to appellant for years after the sale, and within two or three years of the institution of the suit, and that therefore there was no lapse of time: consequently no opinion on that point is requisite. The above decision of the Court virtually settles the second point likewise; for if it be proved that the appellant received the profits for years after the sale, it must have been merely nominal. Here too I need give no opinion. On the third point, it is very evident, from looking well into the history of the estate being brought under the Court of Wards, that it was solely on account of the proprietors, females, quarrelling about the management, and prepared to disturb the public peace; wherefore the magistrate had directed the attachment, and the Government ordered its being managed by the Court of Wards.

The Government however could do so in 1809, only on the ground of incompetency, and not of contumacy, as whatever related to the latter in Regulation X. 1793, had been rescinded by Regulation VII. 1796. Therefore, although the incompetency had no reference to natural defect, bodily or mental, still all the provisions of Regulation X. 1793, must be held applicable, and the sale consequently, if real, invalid.

On the fourth point, it is clear, that the sale, though nominal, was effected by a deed duly drawn out, and attested, and registered, and possession given to all public intent by the mutations in the

Government revenue registers, and all this done to deceive by every ostensible means the public, and to evade a rightful process of law. In short, a more complete piece of consummate chicanery and fraud could not have been perpetrated.

On such a ground, I hold no legal claim can be founded. No persons can by means of law take advantage of their own wrong. I therefore confirm the decision of the lower court, dismissing the suit with full costs.

THE 24TH MARCH 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 193 OF 1845.

Regular Appeal from a decree, in part of claim, passed by the Principal Sudder Ameen of Tirhoot, Ushruf Hosein, February 18th, 1845.

KUNHYA PANDEE, APPELLANT, (PLAINTIFF WITH FIVE OTHERS,)

versus.

GOORDUT PANDEE AND NINE OTHERS, RESPONDENTS, (DEFENDANTS.)

THIS suit was instituted by appellant, on the 20th January 1844, to recover from respondents Company's rupees 24,421-1-6, principal and interest; being *wasilat* (or mesne profits) on certain lands in mouzah Bussuntpore-pukree, pergunnah Surissa, decreed to appellant in another suit. The *wasilat* was claimed from 1223 to 1245 F. (1816 to 1838) with interest to 1250 F. (1843.)

The suit for the land had been instituted in the first instance in the court of the moonsiff; by whom a decree was passed for a half anna's share, in appellant's favor. The claim was for a fourth of the estate, or a 4 annas' share; and, on appeal to the principal sudder ameen, a portion equal to 2 a. 13 g. 1 c. 11 d., was adjudged instead of the half anna decreed by the moonsiff. In neither of these suits was there any mention of *wasilat;* and when an application for it was preferred summarily, the lands had been sold; and appellant was told to bring his action for what he sought, in the court. The present claim was brought accordingly; but the cause of action being carried back eight and twenty years, and nothing having been said or done in regard to it when the land suits were pending, the principal sudder ameen deemed the prin-

ciple laid down in section 6 of the circular order of the 11th January 1839, applicable to the case; and gave a decree only for the period between the institution of the first suit before the moonsiff and the sale of the lands; from 1243 to 1245 F. that is, comprehending three years: the whole amounting to Company's rupees 577-12.

Against this judgment, the present appeal has been made to the Sudder Court. I do not find any reason to interfere; and affirm the decree appealed against, with costs payable by appellant.

THE 26TH MARCH 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 199 OF 1845.

Regular Appeal from a decision passed by the 2d Principal Sudder Ameen of Patna, Mohummud Ibrahim Khan, May 20th, 1845.

BABOO TILUKDHAREE SINGH, APPELLANT, (DEFENDANT,)

versus

LUCHMUN SAHOO, RAM LAL SAHOO, SHAM LAL SAHOO AND MUSST. INDRASUN, RESPONDENTS, HEIRS OF MUNOO LAL, DECEASED, (PLAINTIFF.)

THIS suit was instituted by the plaintiff Munoo Lal, a mahajun, on the 30th January 1845, to recover from appellant the sum of Company's rupees 15,693-5-4, principal and interest, under a bond bearing date the 16th Bysakh 1247, Fuslee, corresponding with the 2d May 1840, executed by appellant in favor of the plaintiff.

The loan (to pay for an auction sale purchase of land) and the execution of the bond, were proved; and the only plea urged against the payment claimed, was, that, if the general account between the parties were admitted as a set off against the amount of the bond, it would be found that no balance was due to the plaintiff, who, on the contrary, was appellant's debtor. The plea was not supported by any evidence, and was deemed by the principal sudder ameen to be altogether inadmissible; and a decree was passed in favor of the plaintiff accordingly.

Nothing new has been urged in appeal; and on the same grounds as those on which it was passed, the decree of the lower court is affirmed, with costs payable by appellant.

THE 27TH MARCH 1846.
PRESENT:
R. H. RATTRAY,
JUDGE.

CASE No. 124 OF 1845.

Regular Appeal from a decision of the Principal Sudder Ameen of Patna, Ephraim DaCosta, passed February 18th, 1845.

FUQEER CHUND, APPELLANT, (PLAINTIFF,)

versus

NEOKEE, AND SHEODEAL, AND MUNEE, SONS OF DITTO, RESPONDENTS, (DEFENDANTS.)

THIS suit was instituted by appellant on the 24th May 1844, to recover, from respondents, possession of the estate, real and personal, of Musst. D'hupoo, widow of Totaram, the brother of appellant's father:—estimated value, Company's rupees 10,000.

The respondent Neokee, is the son of Totaram's sister; and claims to hold the property as the adopted son and heir of Totaram.

The following is the decision appealed against:

"The only point at issue, is, whether the defendant Neokee is the adopted son of Totaram deceased. In my opinion his adoption is clearly proved, by the testimony of his witnesses, and his having been in quiet and undisturbed possession, for more than 25 years, of all property left by Totaram: indeed, if Neokee was not the adopted son of Totaram, how could he, during Musst. D'hupoo's (Totaram's widow's) lifetime, have prosecuted and obtained, in his own name, a decree from the Patna moonsiff's court (under date the 8th December 1835) for debts due to Totaram, his adoptive father,—when the plaintiff made no objection whatever? Neither does it appear that Neokee was the eldest or only son of his natural father. Therefore the plaintiff's claim is inadmissible. Besides, as the defendant has been in possession of the property, by right of adoption, upwards of 25 years, the plaintiff's claim is even then barred by the rules of limitation (see case of Zorowur Singh and others *versus* Zor Singh and others, decided by the Sudder Dewanny Adawlut, 21st July 1825, page 87, volume iv.)—and, as this claim is in fact for the possession of property belonging to Totaram, plaintiff's uncle, the period of limitation for the institution of an action, must be calculated from the date of Totaram's death. The list of property, alleged to have been made by his widow on her death-bed, and the testimony of the witnesses thereto, adduced by the plaintiff, are unworthy of credit. Under these circumstances, I dismiss the plaintiff's claim, with all costs of suit."

Nothing new was urged in appeal; and on the grounds on which the decision of the lower court was passed, that decision is hereby affirmed, with costs payable by appellant.

THE 28TH MARCH 1846.

PRESENT:

C. TUCKER and
J. F. M. REID,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 118 OF 1844.

Review of the Judgment of this Court, on application for admission of a special Appeal by the Government, rejected by Mr. H. Shakespear on the 30th December 1834.

GOVERNMENT, (DEFENDANT,) APPELLANT,

OTHERS ABSENT IN APPEAL, DAMODUR PAHAREE AND GOBERDHUN PAHAREE,

versus

RAM NARAIN, BEARER, (PLAINTIFF,) RESPONDENT.

THE plaintiff in this case got a decree in the Midnapore zillah court, on the 11th May 1831, before the judge, who ordered that Damodur Paharee should first be called on to satisfy the decree; in failure of realization from him, the Government to be held responsible.

Two appeals were preferred to the late Calcutta provincial court, one by Government, the other by Damodur Paharee. The first was disposed of by Mr. Charles Ray Martin, on the 30th September 1833, who upheld the lower court's order. Against this decision the Government appealed specially to the Sudder Dewanny Adawlut; and their petition was thrown out by Mr. H. Shakespear for two reasons—1st, that the period of appeal had expired, and no sufficient grounds for delay were assigned; and 2d, that the "Farkhuttee," or deed of release, bearing the signature of Ram Narain bearer, was not held to be established by the lower courts.

At the time of the abolition of the Calcutta court of appeal, the appeal of Damodur Paharee was on its file, and was transferred to that of this Court. Messrs. Reid and Halhed, on the 20th Sep-

tember 1837, and the 14th March 1838, finally disposed of it, and in their judgment declared the already mentioned deed of release proved, on which they reversed the decision of the zillah judge.

Application was then made by Government for a review of Mr. Shakespear's order, confirming that of the late Calcutta provincial court, and was admitted by Messrs. Reid and Barlow, on the 6th June 1843 and 20th April 1844. The case, having been placed on the regular file of this Court, was heard on the 21st March, and again this day.

The Court are of opinion, that the decisions of two judges of this Court over-ruled that of one judge of the provincial court, that the point at issue in the two appeals preferred against the zillah judge's order was one and the same, viz.: the integrity or otherwise of the deed of release. The judges of this Court held the deed to be proved, and decreed in favor of the appellant, Damodur Paharee, dismissing the original plaint of Ram Narain Bearer. Under these circumstances it necessarily follows, that the Government, whose responsibility was, under the zillah judge's order, contingent on that of the principal, Damodur, are equally entitled to exemption. They therefore direct that the appeal be decreed, and the case struck off the Court's file—costs charged to the respondent.

The usual order was passed in regard to the return of the stampt paper.

THE 28TH MARCH 1846.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 155 OF 1844.

Special Appeal from the order of the Judge of Rajshahee.

DEPUTY COLLECTOR OF PUBNAH, (DEFENDANT,) APPELLANT,

versus

KIRTEENATH SURMAH MOJMODAR, (PLAINTIFF,) RESPONDENT.

ON the 15th May Mr. Tucker admitted an application for special appeal on the part of Government.

Plaintiff states that, on the 9th Poos 1244, an estate standing in the name of Roopkaunth Mojmodar in the collector's books, at sudder jumma of 1 rupee, 1 anna, 1 pie, and called Nakalea Chuck, pergunnah Yusufshahee, was put up for Government balances of 1243 by the collector, and purchased by him, plaintiff, for 12 rupees. A chuprassee was sent to put him in possession, and was about to mark off the boundaries of the property which had been sold, when Gholam Hyder Khan, a deputy collector, laid claim to it as a khas mehal. Plaintiff petitioned the special deputy collector without success.

It is stated that in the year 1219 the river carried off the lands of the estate, which by degrees re-formed up to 1241; that the area was originally 9 khadas, 11 pakees, 7 kanees; that they adjoined the Government chur called Nakalea, and that the boundaries of the purchase are as follows: north, the Government Chur Nakalea; south, a branch of the Hoora Sagur river; west, Chur Peychakorah; and east, Chur Sarasea.

The ryots, it is alleged, cultivated these lands, and paid rents for them to the former proprietor of the chuck. A gomashteh of the Mohungunge factory, Gooroochurn Bhoomick, took a pottah of 6 khadas of the land for 3 years, 1241 to 1243, and grew indigo on it. The deputy collector of Pubna sold the estate to plaintiff; and from that date to the present has taken malgozaree from him. The original estate contained 9 khadas, 12 pakees, 7 kanees; its proceeds are Company's rupees 38, 13 annas, 5 gundas. From the 9th Poos 1244 to Poos 1248, being 3 years, 11 months, the sum of 145 rupees, 9 annas, 3 pie, are due as wasilat. The sudder jumma is 1 rupee, 1 anna, 1 pie, three times that amount added to the wasilat claimed, equals 148 rupees, 12 annas, 6 pie, at which plaintiff lays his suit for possession and mesne profits, with interest.

Answer of the deputy collector of Pubna, dated 4th August 1842.

Plaintiff, after his purchase went and pointed out to the chuprassee sent to put him in possession, certain land which had been decreed to Government by the special deputy collector in 1834, and confirmed by the special commissioner in 1838, on the 25th January; for which a settlement had, under regulation IX. of 1833, been made with others. Had the former proprietor, whose rights plaintiff purchased, held any of the land, he would have appeared in the resumption suit, when the land was attached.

The sudder ameen of Rajshahee, on the 22d February 1843, dismissed the plaint. Plaintiff produced two chittahs, one of 1219 and one of 1241, one kaboleut, and three witnesses. The court placed no reliance on the statement as to the quantity of land detailed in the plaint. Plaintiff, on being called upon to produce the kaboleut of Gooroochurn Bhoomick, gomashteh of the Mohungunge factory, was unable after search to find it; and, when desired to subpœna the gomashteh himself, refused to do so; the sudder

ameen, under these circumstances, was of opinion that the former proprietor never was, as alleged, in possession up to 1243.

Chur Nakalea was decreed to Government by the collector in 1834; and his order was confirmed, in appeal, by the special commissioner. In that case no mention is made of Chuck Nakalea Had Roopkaunt Mojmodar, the former proprietor, held any rights, he would have protested when a settlement was made with Dwarkinath Tagore and others. Any alluvial land, adjoining a chur the property of Government, belonged to Government under Regulation XI. of 1825. Such was the judgment of the sudder ameen.

The judge of Rajshahee, Mr. Cheap, on the 19th September 1843, decided as follows:

The collector sold the mehal to the plaintiff: it must therefore have been in existence at the time of the sale. If he sells a talook, he is bound to put the purchaser in possession in lieu of the malgozaree he demands. I, therefore decree a specific performance, and that the appellant have a talook measured to him from the chur or khas mehal in the possession of Government, as near as possible to the site occupied by the original estate he purchased, and further that he obtain mesne profits, reckoning them at three times the sudder jumma, deducting one-third for Government dues on the land—costs to be charged to the deputy collector of Pubna.

By the Court.

The sudder ameen dismissed this suit, and the judge ought to have dismissed the appeal on ascertaining that the lands he awarded had been previously decreed to the Government by the resumption authorities. Instead of this, he gives, in compensation of lands claimed to have been purchased by the plaintiff at collector's sale, other lands which he has not defined, because it was in his opinion incumbent on that officer, having sold an estate, to put the purchaser in possession of the land which belonged to it. Moreover this decree does not specify the precise lands to be given in execution of it, and consequently could never be carried out. The judge's order is reversed; the appeal is decreed; and costs charged to the respondent.

THE 31ST MARCH 1846.
PRESENT:
R. H. RATTRAY and
C. TUCKER,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 220 OF 1844.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Shahabad, Munowur Ali, May 30th 1844.

GOVERNMENT, APPELLANT, (DEFENDANT, WITH OTHER DEFENDANTS,)

versus

RUGHOBEER SINGH AND OTHERS, RESPONDENTS, (PLAINTIFFS.)

THIS suit was instituted by respondents on the 19th September 1843, to obtain the reversal of the sale of talook Kulureea, in pergunnah Bâruhgâon, with *wasilat* (or mesne profits) for 1250 Fuslee, on a 9 annas' share of the same: the whole estimated at Company's rupees 7193-11-11.

The plaint sets forth, that the share of plaintiffs (respondents) in the case, was 9 annas; that of the defendants (other than Government) 7 annas; that, heretofore, no arrears of revenue had ever occurred; and tha tall had been paid up to Magh 1250 F.; that the defendants, Ram Goleela Singh and others, after this, with a view to effecting a purchase of the whole estate, held back the *kists* (instalments) payable in Bysakh, in consequence of which a sale took place, and they purchased the property; that plaintiffs appealed to the commissioner of revenue, stating the purchase to have been made by those whose non-payment of their revenue had caused the sale, but without effect, the sale being confirmed; that on the 6th June 1843 (24th Jeyt 1250 F.) plaintiffs, accompanied by the defendants, by whom the greater portion of the arrear was due, proceeded to the collector's office, with the full amount claimed as balance, Company's rupees 1036-11; that the defendants had promised to pay in their portion, but there was a collusion between them and the collector's omlah, and before the money was carried to account, the office closed; that, next day, the 7th June, was a holiday; that, on the 8th they again attended, but owing to the pressure from those assembled at the sale, and the Sepahees on duty, they could

not get near the collector, and all they could do, was, to intimate their attendance to the omlah, which they did, as can be testified; that on the 9th the estate was put up to sale, and purchased by their coparceners, the defendants; that such a sale is altogether irregular and illegal; that the collector states in his proceeding, that there is nothing in Section 30, Act XII. 1841, prohibitory of such a purchase; that the court will however observe that the estate was an undivided one, and that the arrear due was so by these sharers, who have purchased the lands; that such a transaction is unwarrantable, and is opposed by Section 30; that, further, the settlement had been made with plaintiffs and others at Sicca rupees 2200, which, with the batta due, had been regularly paid in Company's rupees; that before this sale, 1190 rupees had been paid on account of 1250 F. and, deducting this, there remained due, to Bysakh, rupees 888-2-8; that the notice issued, however, exhibited the sum of rupees 1036-11 as the balance, and for this amount the estate was brought to sale; that such a proceeding is an infraction of the rules laid down in Regulation XI. of 1822; and, finally, that the whole is illegal, and the sale must necessarily be cancelled.

Amongst other items, pleaded by appellant and the defendants generally, it was urged, that the plaintiffs (respondents) had themselves barred the court's cognisance of the suit, by their omission in their previous application to the commissioner, to mention the collector's alleged infraction of the law, in regard to the incorrectness of the balance for which the estate was sold.

The principal sudder ameen reversed the sale, on the sole ground of the balances indicated by the collector, in his sale notice, being in excess of what was really due.

This point was not even alluded to by the respondents in their petition to the commissioner, and under section 25, Act XII. 1841, the plea could not be legally entertained by the principal sudder ameen; whose decree is accordingly reversed, with costs payable by respondents.

THE 31ST MARCH 1846.

PRESENT:

R. H. RATTRAY and
C. TUCKER,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 231 OF 1844.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Shahabad, Munowur Ali, May 30th, 1844.

BHYROO SINGH, RAM GOOLEILA SINGH, AND OTHERS, APPELLANTS, (DEFENDANTS, LATE PURCHASERS,)

versus

RUGHOBEER SINGH AND OTHERS, RESPONDENTS, (PLAINTIFFS.)

THE appellants in this case were defendants, with Government, in that the particulars of which are given under No. 220, but appealed distinctly against the decree passed by the principal sudder ameen; which decree has been already noted as reversed. As in the other, so in this appeal, all costs will be paid by respondents.

THE 31ST MARCH 1846.

PRESENT:

A. DICK,
JUDGE.

CASE No. 103 OF 1843.

Special Appeal from the decision of the Judge of Zillah Tipperah.

RANEE KUTTEEANEE, OF PERGUNNAH BHULLOOA, APPELLANT, (DEFENDANT,)

versus

SUTH CHURN GHOOSAL, SON AND HEIR OF RAJAH KALEE SHUNKUR GHOOSAL, RESPONDENT, (PLAINTIFF.)

Pleaders, Golam Sufdur for Appellant, and Charles French and Raj Narain for Respondent.

SUIT laid at 3150 Company's rupees, for possession of 12 annas of a talooq in Jynuggur.

The respondent, in the first instance, sued to reverse an order of a commissioner, deputed under Regulation XI. 1822, to put the appellant in possession of pergunnah Bhullooa, purchased at auction sale for arrears of Government revenue, and then sold to her son, deceased. The Ranee claimed 9 annas of the talooq Ram Bullub, as still appertaining to her pergunnah Bhullooa, 7 annas only of it having been made over in 1180 B. Æ., and included in the Chowdraee Jynuggur estate of respondent. This was denied by the respondent, who maintained that 7 annas of a talooq called Chundur Narain's, was made over, and formed the talooq Ram Bullub of his estate. Of it Ram Bullub sold 4 annas out of 16 annas into which he had formed it, and kept 12 annas. These 12 annas fell into arrears, and eventually became the property of the respondent. The commissioner, on certain proceedings of the collectorate, decided against the respondent, who sued to have his order reversed. At the intimation of the court, he filed a supplementary plaint suing for possession on the whole of his 12 annas of 16 annas of the talooq Ram Bullub, having, in the first instance, laid his suit at the value of only 9 annas out of 16 annas of the 12 annas; which appellant had claimed, and the commissioner ordered.

The principal sudder ameen gave a decree to respondent for only 7 annas of 16 annas of the 12 annas; deeming the claim of appellant good to the 9-16th of the 12 annas, which she had set forth.

The judge in appeal thought the respondent had clearly established his right to the whole of the villages specified in the plaint, decreed the whole of them to him, as belonging to the talooq Ram Bullub, which he held constituted a separate talooq from that of Chundur Narain, and was formed, when made over to the estate of respondent, out of 7 annas of the talooq Chundur Narain, 9 annas remaining under purgunnah Bhullooa. He also awarded usufruct from the date of the principal sudder ameen's decree.

The special appeal was granted,—1st because the judge had decreed the whole of the villages of the talooq Ram Bullub to respondent, when he had sued for 12 annas only; and 2d, had awarded usufruct when respondent had declared in his plaint, that he was in possession.

JUDGMENT.

The main point on which this suit pends, is this. Were there two talooqs, one named Chundur Narain, the other Ram Bullub, previous to 1180 B. Æ., when the estate of respondent, Choudraee Jynuggur, was formed, and the "talooq Ram Bullub moozafat Chundur Narain, hissah 7 anee," taken from Tuppa Husht Hazaree, pergunnah Bhullooah, and included in Choudraee Jynuggur, or only one talooq, Chundur Narain, and out of which, on 7 annas

being made over to Jynuggur, the talooq Ram Bullub was formed, and the remaining 9 annas continuing as talooq Chunder Narain in pergunnah Bhullooa. To settle this, nothing very satisfactory has been adduced by either party. The quinquennial registers, and other documents in the collectorate, ought to clear away all doubt. They have not been examined or copies filed. Further, neither party has made any allusion to the remaining 4 annas of the 7-16th which respondent intimated had been sold by Ram Bullub. It is unknown who is in possession of that portion: and no reason given why appellant has laid no claim there, or if he has, why no defence made.

The decision of the judge is evidently beyond the claim, or erroneously recorded by omission of the word "belonging to the 12 annas share." And in awarding usufruct from the date of the principal sudder ameen's decision, he has neglected to record whether possession had been given to respondent under that decree, or indeed why he awarded it at all. Therefore the case is remanded for the judge to take evidence as above indicated, and decide in accordance with the claim.

ADVERTISEMENT.

The publication of the Decisions of the Sudder Dewanny Adawlut, recorded in English, in conformity to Act XII. of 1843, has been directed by the orders of the Right Honorable the Governor of Bengal, under date the 8th January 1845, No. 64.

The Selected Cases now annually published, to serve as precedents and guides to the lower courts in matters of law and practice, will still continue to be published. The object of the present issue is simply to give all possible publicity to the Decisions of the Sudder Court.

TABLE OF CASES.

Regular Cases.

APPLICATIONS FOR SPECIAL APPEAL.

THE 1ST APRIL 1846.

PRESENT:

J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 226 OF 1843.

A Regular Appeal from the decision of the Principal Sudder Ameen of Tipperah.

RANEE KUTTEEANEE, (DEFENDANT,) APPELLANT,

versus

RAJ NARAYN DEH, RAM CHUNDER DEH AND RAJ KUMUL DEH, (PLAINTIFFS,) RESPONDENTS.

THE plaintiffs instituted this suit *in forma pauperis* to recover possession, with mesne profits, of an hereditary talook and a purchased talook, both situate within chukla Jugdanund, pergunnah Bulooa, and held prior to the decennial settlement in the name of their ancestor, Ram Govind Shikdar, viz. the hereditary talook, consisting of Kismut Nij Jugdanund, Andarmanic, Goozai-dugee with Barooaleea, Bulla-dugee, and Mouzehs Shahood-maree and Durwesh-purwesh, assessed with an annual jumma of Sicca rupees 241, and the purchased talook Kismut Ulgee, assessed with an annual jumma of Sicca rupees 17-8-0, from which they had been dispossessed in Chyt 1243 by Mr. Kemp, when deputed, as commissioner under Clause 2, Section 28, Regulation XI. 1822, to put Ranee Kuteeanee in possession of pergunnah Bulooa, purchased at public auction by Doarkanath Thakoor, and sold by him to Sri Narayn Sing, son of Ranee Kuteeanee. Suit laid at 11,000 rupees, the estimated value of the talooks, and 6,339-4-0-0 mesne profits from 1244 to Jhyt 1248 B. S., total rupees 17,339-4-0-0.

Ranee Kuteeanee denied that the plaintiffs had any talook in chukla Jugdanund. She asserted that Nur Nurain Chowdry and Beer Nurain Chowdry, who had a share of one anna two cowries in pergunnah Bulooa, having taken forcible possession on its formation by alluvion, to the detriment of the other sharers of chukla Jugdanund, gave Andarmanic, &c., at a low assessment, to Ram Govind Shikdar and Sri Ram Bundharee, their mumlook, or slaves, as etimamdars. That Mr. Muir, having been deputed as commis-

sioner to make a division of the estate by the sudder committee, going to the spot, took the chur out of the possession of two said sharers, and made it over to the joint estate. She denied that etimamdars have the rights of talookdars.

The principal sudder ameen of Tipperah, Moolvee Ubool Khyr Mahomed Ali, was of opinion that the documents filed by the plaintiffs clearly established the fact that a talook in the name of Ram Govind Shikdar in chukla Jugdanund, and a purchased talook in the name of Mahomed Rufee in Kismut Ulgee, existed long before the decennial settlement. He observed that the defendant could not deny their existence, for it appears from a copy of a proceeding of the 4th March 1818, that disputes existed with Kishen Chunder Sing, the husband of the defendant, (who, it appears, prior to the auction sale to Doarkanath Thakoor, was a sharer in the pergunnah,) regarding the rent of the talook, and that he acknowledged the existence of the tenure; and that the decision of the moonsiff of the 8th division, of 12th December 1841, shews that the defendant herself acknowledged the existence of the talooks. Rejecting the evidence of the witnesses produced to prove that Nur Narain and Beer Narain held the talook in the names of their slaves, Ram Govind Shikdar and Sri Ram Bundharee, he passed judgment in favor of the plaintiffs on the 27th July 1842, awarding to them possession of the talooks claimed. He did not deem it proper to enter on the question of the rent to be paid, as that would be determined when the zumeendar should sue to fix it. The costs were charged to the defendant.

Ranee Kuteeanee having appealed to this Court, the case came on before Mr. Gordon, who referred it to a full bench.

JUDGMENT OF MESSRS. REID AND JACKSON.

This is a claim for two things, a mouroosee talook and a purchased talook, each at a certain jumma, named in the plaint. The plaintiffs state that they have been illegally turned out by Mr. Kemp, a commissioner under Clause 2, Section 28, Regulation XI. 1822. It appears to us that Mr. Kemp was fully empowered to decide on the right of the plaintiffs to hold the talooks in question; and having decided against them, it is now incumbent on the plaintiffs to prove their right and title to the thing claimed, and exact nature of that right and title, before the order of Mr. Kemp can be reversed.

To establish this right, the papers produced, are, in our opinion, insufficient. From the proceeding of Mr. Kemp, it appears that the plaintiffs refused before him to retain possession, paying jumma at the pergunnah rates, claiming distinctly the possession on a certain fixed jumma. The plaintiffs having refused that offer, they must now establish a right to possession at the jumma they mention, or at least a right to a hereditary transferable tenure of some descrip-

tion; but they have failed to establish any such tenure; we therefore consider the plaintiffs' claim not proved, and, reversing the decision of the principal sudder ameen, dismiss the claim with costs against the plaintiffs.

Judgment of Mr. Dick.

The respondents, plaintiffs, have proved, in a manner violently presumptive, that the talook in question, from which they were ousted by Mr. Kemp, the commissioner appointed under Regulation XI. 1822, is an hereditary transferable tenure. They have filed copy of a judicial decree, given in 1795, in which is clear mention of the talook, as belonging to the ancestor of the respondents, who was a party in that suit; and that it had existed from 1179 B. Æ. The nature of the tenure is not therein stated; but the fact of the descendants of that person being in possession by inheritance, in various portions according to their propinquity to him, in 1837, forty-two years subsequent, is the strongest indirect evidence of the tenure being hereditary, that can be well conceived. The original deed or pottah of the tenure is not forthcoming; and no wonder after such a lapse of time. Mr. Kemp does not appear from his proceeding, roobukaree, held on the subject, to have entered at all into the nature of the tenure by which respondents claimed to hold possession, and pay rent. This he was bound to do; for if there had been evidence *prima facie*, of the tenure being hereditary and transferable, he could not legally dispossess under Section 32, Regulation XI. 1822.

The decision of the principal sudder ameen is, therefore, in my judgment, perfectly correct, and I would uphold it.

THE 3D APRIL 1846.

PRESENT:

C. TUCKER and
J. F. M. REID,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 111 OF 1844.

Regular Appeal from the decision of the Principal Sudder Ameen of Nuddeah.

SUROOP CHUNDER SIRCAR CHOWDREE—OTHERS ABSENT IN APPEAL, (DEFENDANT,) APPELLANT,

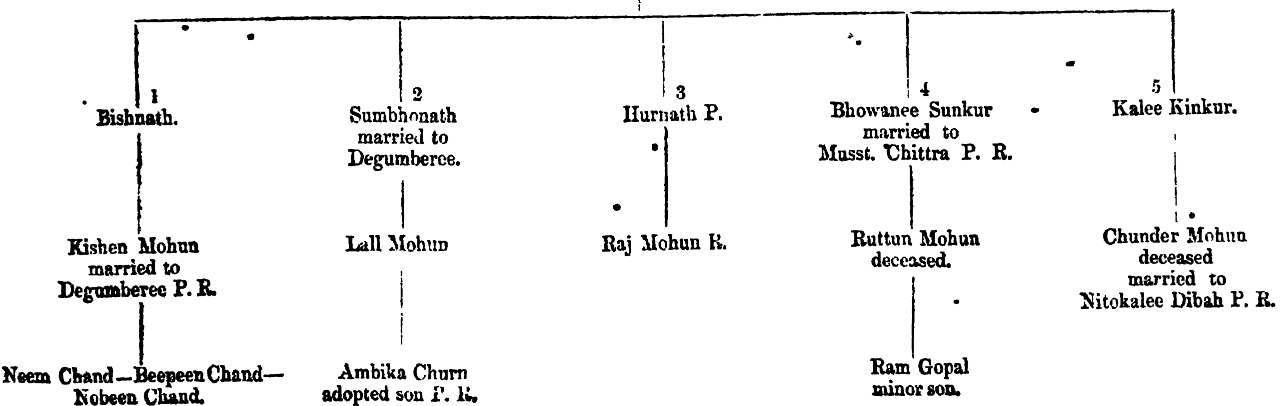
SUROOP CHUNDER BOSE; GUNGADHUR SIRCAR, AND, ON DEMISE, BISHEN CHUNDER SIRCAR AND HURREES CHUNDER SIRCAR, HIS TWO SONS; RAM MOHUN MOKERJEA; AND RAM CHAND BANORJEA, DEFENDANTS,

versus

HURNATH RAY CHOWDREE; ON HIS DEMISE RAJ MOHUN, HIS SON; AMBIKA CHURN RAY CHOWDREE; CHITTRA DIBAH, ON PART OF RAM GOPAL, MINOR SON OF RUTTUN MOHUN, DECEASED; DEGUMBEREE DIBAH, MOTHER AND ON PART OF NEEM CHAND RAY, BEPEEN RAY, AND NOBEEN CHAND RAY, MINORS; AND NITOKALEE DIBAH, WIDOW OF CHUNDER MOHUN RAY, (PLAINTIFFS,) RESPONDENTS.

THE plaint, filed on the 18th August 1842, corresponding with the 3d Bhadoon 1249, sets forth that Hurnath, Sumbhonath, Bishennath, Bhowanee Sunkur, and Kalee Kinkur, the sons of Nund Kishore Ray,* in 1210 B. S., purchased, with joint funds, Dehee Barbukpore, at sudder jumma Company's rupees 4402, 11 annas, at public sale, in the name of Kalee Kinkur Ray, and got possession. In Bysack 1220, Kalee Kinkur died, leaving a minor son Chunder Mohun Ray. The estate was in jeopardy for joint debts, and, under the cover of the boy's minority, was put under the Court of Wards and was let in farm: it was not at that time a profitable estate, and could not satisfy the demands of the creditors.

In 1225, half the estate was sold by order of the Court of Wards, and Sooroop Chunder Sircar Chowdree bought it: the remaining half was given to Gooroopersad, his mohurir, in farm, which was


* Nund Kishore Ray.
1 Bishnath.
2 Sumbhonath married to Degumberce.
3 Hurnath P.
4 Bhowanee Sunkur married to Musst. Chittra P. R.
5 Kalee Kinkur.
Kishen Mohun married to Degumberee P. R.
Lall Mohun
Raj Mohun R.
Ruttun Mohun deceased.
Chunder Mohun deceased married to Nitokalee Dibah P. R.
Neem Chand—Beepeen Chand—Nobeen Chand.
Ambika Churn adopted son P. R.
Ram Gopal minor son.

to run to 1228,—Sooroop himself being the farmer's security. The disputes which had existed between us in the Calcutta court of appeal being at this time settled, each sharer got possession of his share in 1229, when Sooroop Chunder Sircar again got a farm from 1229 to 1233 for 5 years, in the name of Gour Hurree Bose, his moktear, on the security of Gunga Dhur Sircar, his, Sooroop's, younger brother, at a jumma of rupees 2733, 12 annas, 4 pie. Of this Sicca rupees 2063, 12 annas, 4 pie was the sudder jumma, which he was to pay to the collector; the remaining profits, Sicca rupees 670, were to be paid to us, Hurnath, Chunder Mohun,—husband of Nitokalee Dibah, and Degumberee Dibah, who gave him the farm. The farm had yet 18 months to run, when, in consequence of an inundation, we remitted 120 rupees of our profits, and, on the 10th Kartik 1232, gave him another farm for 4 years from 1234 to 1237, agreeing to demand only 550 rupees profits from him. Ten months of this farm yet remained when, on the 27th Jheit 1237, Sooroop Chunder Bose, the son of Gour Hurree the farmer, got a farm from 1238 to 1242 for 5 years, on the security of Gungadhur Sircar Chowdree, on the same terms. He gave a *kabooleut* in the presence of some vakeels, got possession, and paid the sudder revenue through his moktear. The estate on the lapse of this last farm was a profitable one, and Sooroop Chunder again, in his own name, got a lease from 1243 to 1245 for three years, engaging to pay us Sicca 670, or Company's rupees 714, 10 annas profits, and the sudder jumma rupees 2201, 5 annas, 10 gundas to the collector. A relative of ours named Omakaunth, attacked our house, plundered it, and carried off numerous papers. Information of this was given in the *foujdaree* court. Amongst these was the *kabooleut* for 1243. We have often applied to Sooroop Sircar for another, but he would not give one. From 1243 to 1245 he paid us 963, part of our profits, the balance is due. In 1246 we gave a farm for 5 years to Ram Chand Banorjea, at jumma of rupees 3491, 5 annas, 10 gundas. When he went to collect, Sooroop objected; disputes arose, and Sooroop's people were fined. Mudhoo Soodun Mittre, the gomashteh of Ram Chand, sued Kulleem Khan and Petumber Ghose for rents; on which Sooroop protested, and claimed one half of the talook as his own property and the other half as his putnee right; he however failed to prove this, and the collector dismissed his claim. Sooroop has ousted us since 1246, and given a farm to the proprietor of the Jingergatchee factory, on the security of Mr. Draper.

After deducting 963 rupees paid to us, the sum of rupees 1180, 14 annas, with interest thereon being 867-10-6, making a total of rupees 2048, 8 annas, 6, is due to us as profits from 1243 to 1245.

The sum of rupees 11698, 11 annas, was the farming jumma due from 1246 to Srabon 1249; after payment of 7154-6, the sudder

jumma, a balance of 4544-4-6, principal and interest, is due, which with the above rupees 2048, 8 annas, 6, makes 6592-13-6. Three times the sudder jumma amounts to 6604-1-6. We therefore sue at 13196-14-6, for possession and wasilat, with interest and costs to date of realization. As Ram Chand Banorjea, to whom we gave the farm, does not join in this action, we sue him also, as well as Ram Mohun Mokerjea who has purchased 2 annas of Sooroop Sircar's own share, and the gentleman who holds the farm.

Answer of Sooroop Chunder Sircar:—On the 21st Phalgoon 1235, the talookdars Hurnath Ray, Chunder Mohun Ray, and Degumberee, gave me a putnee of their 8 annas share of Barbukpore for rupees 5000. I previously held it on farm. I promised to pay them rupees 158 profits from 1236. The payment was made through my people; and the *kaboleut* and *ikrar* were also sent through them to Mohinpore, plaintiffs' residence. From 1236 to the present date, being 14 years, I have held possession of this 8 annas share as *putneedar*, and paid its *malgozaree* to the collector. I also paid the *talookdars* their profits up to 1245, and have receipts for the same. When the estate had been improved by my management, the talookdars put up Ram Chunder Banorjea as a farmer of the lands, which, they said, belonged to Kishen Mohun Chowdree, and went into the *foujdaree* court; there they effected nothing. They then instituted suits against the ryots under Regulation VII. of 1799; these were dismissed by the collector.

From 1246 they have refused the profits which I have offered them. All the intermediate farms alluded to by the plaintiffs are false; from 1236, I have held as *putneedar*.

My brother Gungadhur Sircar died in 1240; how could he stand security in 1242?

The names of Hurnath, Chunder Mohun, and Degumberee, were current in the sudder and mofussil: mention is now made of the several members of the family holding their respective shares in the *mofussil:* this will not avail them.

Degumberee now alludes to her 3 minor sons; but she was the recorded proprietor.

Reply of plaintiffs:—We never, as alleged, got rupees 5000 from Sooroop Chunder Sircar, or gave him a putnee: were it so, the deed of sale would have been registered, and he would have stated the fact: his denial of the intermediate farms after 1229 to 1233, is unfounded.

When the disputed property was pledged as security for the ghat darogah of Goaree, Kishen Mohun Banorjea, to the collector, the defendant Sooroop Sircar was called upon for certain information: he on the 22d Assar 1237 gave it, and, though his statement is a false one, he is silent in it as to his *putnee* tenure: the ryots also

who were called on never made mention of defendant's *putnee* tenure. We are moreover 5 sharers: how could defendant get a putnee from 3 sharers only, as stated in his answer? In 1239 we applied for mutation and entry of our names in the collector's books. Had the defendant possessed any *putnee* rights, he would on issue of notice for the appearance of other sharers, have then protested. The profits of the farm are 1500 rupees per annum; why should we give a putnee of the estate for 5000 rupees and a payment of 158 rupees annually only as profits?

Rejoinder by the defendant:—Though no mention is made of my *putnee* right in the answer I sent to the collector, when he required information from me in the matter of the ghat darogah's security, nevertheless the alleged leases are not proved by the plaintiff, nor is my *putnee* disproved. When the *putnee* was given, the 3 persons who gave it were in all respects authorised to grant it as *maliks*, and they took the cash. The mutation of names in 1239 was not made with my knowledge. On the expiry of the farm in 1233, the plaintiffs left the mehal in my hands while the negotiation for the *putnee* was going on; and they have recovered the profits for the years 1234 and 1235, and I have paid the Government revenue.

Answer of Ram Chand Banorjea:—Plaintiffs gave me a farm of the mehal for 5 years from 1246 to 1250. On my attempting to enter on it, the defendant Sooroop Sircar objected; proceedings were taken in the foujdaree court; and my gomashteh sued some of the ryots for rent: on the protest of Sooroop Sircar, the collector ordered the party who was dissatisfied to sue in the civil court.

The principal sudder ameen on the 17th January 1844 passed judgment as follows:—

'The point for decision in this case is: is the 8 annas of Barbukpore, now in dispute, in the possession of the defendant by right of *putnee* or by right of farm?

Though the defendant's *kabooleut* of 1232 is not filed by the plaintiffs, their claim is not on that account invalid; for defendant admits he took a farm in 1229, on the security of his brother Gungadhur, and that he remained in possession up to 1235 without making any new settlement, and that he paid profits to the zemindars: there can therefore be no necessity for filing the defendant's kaboleut.

The defendant denies the kaboleut of 1237; but it is proved by the evidence of Debnath Banorjea and Hur Chunder Hujrah, vakeels of this court, and by other witnesses also, that, on the 29th Jheit 1237, a kaboleut was executed in the name of Sooroop Chunder Bose, on security of Gungadhur Sircar, defendant's brother, and was given to the plaintiffs.

As the kaboleut of 1237 is proved, the *putnee kobaleh* produced by the defendant cannot be proved. It is a most suspicious document for the following reasons:—

The disputed property was pledged for the ghat darogah, Kishen Mohun Banorjea, by some of the plaintiffs; and when the collector called upon Sooroop Chunder, the defendant, for certain information regarding it, he, in 1237, merely stated that the plaintiffs had borrowed money from him and given him a document, and that he had been in possession for 15 or 16 years. The ryots also stated, in their replies, that they were not aware of defendant having any *putnee* rights. The *kobaleh* bears the signature "Meean Reeazoddeen, naib cazee;" no such person obtained a sunnud under Regulation XXXIX. of 1793. No respectable persons in Sibnibas or Moheishpore, where the defendant and plaintiffs reside, are witnesses to it. The stamp on which it is written was sold some 22 months previously at Sootanuttee. The defendant produces a receipt for rupees 1225, written on a stamp purchased in Calcutta on the same day as the paper on which the *kobaleh* was written; but in his pleadings he has made no mention of this document. The receipts for the profits of the *putnee* are written on old paper with fresh ink, and three of them, for Srabon and Poos 1239 and for Aghon 1240, bear the name of Chunder Mohun, whereas an istahar dated the 6th Assar 1239 by the collector, shews Chunder Mohun had died. It is proved by petitions presented by Hurnath and others in 1226, that there are 5 sharers in the estate: in such case a *putnee* granted to the defendant by Hurnath, Degumberee, and Kishen Mohun, without consent of the others, is invalid. The defendant produces sundry *pottahs* and receipts of the *ryots*, mentioning his *putnee* tenure; but it does not appear when and before whom and in what cases they have been filed: they have been prepared for a special purpose. I decree possession of the 8 annas Barbukpore to the plaintiffs, with mesne profits. Plaintiffs admit receipt of 963 from 1243 to 1245. They are unable to file defendant's *kuboleut* of 1243, in which the profits are stated to be rupees 670: the kuboleut of 1237, shews the amount profits to be 586-10-13-1, which, from 1243 to 1247, after deducting amounts received, leaves a balance of 797 due to plaintiffs; to this must be added the profits of 1246 and 1247; at 586-10-13-1, being rupees 1173, 5 annas, 6 gundas, 2 cowries, 2 kranths, and interest thereon, rupees 1009, 1 anna, 7 gundas, making a total of rupees 2899, 6 annas, 13 gundas, 2 cowries, 2 kranths. A further sum of rupees 1298, 10 annas, 10 gundahs per annum, net profits, as per copy of an *ummulnameh* given to the Jingergatchee factory by Ram Mohun Mokerjea, from 1248 to 1250, amounting to 3571-4-17, to which the defendant has made no objections, with interest thereon 393-7-11-2, total rupees 3964, 12 annas, 8 gundas,

2 cowries, is also due to plaintiffs,—making a grand total of rupees 6864, 3 annas, 2 gundas, 2 cowries, 2 kranths, which, with interest, up to the date of realisation, is decreed. I further decree mesne profits from the present date to date of plaintiffs regaining possession in execution of decree, with interest, and costs with interest, against Sooroop Chunder Sircar. The other defendants are released from the claim.'

By the Court.

The plaintiffs came into court on the strength of certain farming engagements which they allege defendant at various periods, between 1228 and 1248, entered into with them: they file however but one *kaboleut*, said to be executed by the defendant, dated 27th Jheit 1237. The object of this action is to oust the defendant on the ground that he is only a farmer, whilst the latter claims to hold the lands under a deed of sale, dated the 21st Phalgoon 1235, as a *putneedar*, which he has filed in court. On the part of the plaintiffs, the documentary proof put in, is grounded on the replies given by the defendant and some ryots to the requisition of the collector; but it chiefly rests on the *kaboleut* of 1237. As regards this document, the Court observe that it bears the signature of Sooroop Chunder Bose; that under the terms of it 550 rupees per annum profits were to be paid to the plaintiffs,—that the Government revenue was to be paid by the farmer, defendant, and the collector's receipts for the same were to be made over to the plaintiffs, who, again, were to give receipts to the defendant for the profits and the official receipts of the collector. This *kaboleut* bears the signature of Gungadhur Sircar, as security, who on his part states the farm is given on advances made, and that the profits are to be set off against the loan. It is alleged the deed was executed by Sooroop Sircar, in the name, however, of Sooroop Bose. The defendant has filed a *kobaleh*, signed by Hurnath Ray, Chunder Mohun Ray, and Degumberee, dated the 12th Phalgoon 1235, which is clearly proved by the evidence adduced; he has shewn that the three last mentioned individuals were managers on the part of all the sharers—moreover the plaintiffs admit that defendant held under a farm granted by these same persons. The plea, now urged, that the act of these three cannot be binding on the other sharers is inadmissible. Defendant also puts in the collector's receipts for revenue paid to Government, and receipts signed by the plaintiffs acknowledging payment of profits to them up to 1245: all these are proved by witnesses. Taking all the circumstances into consideration, the Court are of opinion the plaintiffs have failed to make out their case; they therefore decree for the appellant, defendant in the original suit, and charge all costs to the respondents.

THE 3D APRIL 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 113 OF 1845.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Shahabad, Munowur Ali Khan, February 17th, 1845.

DEWAN RAMNATH SINGH, APPELLANT, (DEFENDANT,)

versus

THAKUR DAS, RESPONDENT, (PLAINTIFF.)

THIS suit was instituted by respondent, July 26th 1844, to recover from appellant Company's rupees 6,326-3-5, principal and interest, under a *bybilwufa* (or conditional sale) of mouza Gouree, in pergunnah Dunwar.

The case is in substance as follows: On the 19th September 1837, Moost. Boonyad Fatima borrowed from respondent 5,500 Sicca rupees, granting, in return, a *bybilwufa* of the village named, let in farm to Cheonee Lal, the son of respondent, from whom the latter was to receive the interest by a yearly payment of Sicca rupees 660. This arrangement continued in force to 1251 F. (1843) when the lands being about to be sold in satisfaction of a decree of court, respondent pleaded his *bybilwufa;* but was told to look to the purchaser for a settlement of his debt. Appellant purchased the property for 7000 rupees; and, in December 1843, deposited in court Company's rupees 5,866-5-4, the principal of respondent's loan to Boonyad Fatima; of which due notice was given to respondent, who lodged his deed of sale in court, and prayed payment. This however was prevented by appellant; who protested against the money being made over to him, till the *pottah* held by Cheonee Lal should also be lodged in court (in token of a resignation of his lease;) upon which, the judge refused to proceed further between the parties till their disputes should be settled. The present action was then brought by respondent; in whose favor the decree appealed against was passed.

Appellant pleads, that the principal of the original debt having been deposited in court, interest cannot justly be demanded from him; and that Cheonee Lal being respondent's son, and holding as such, his *pottah* cannot be upheld after the father's debt has been satisfied.

In answer to these objections, it is only necessary to observe, that the money deposited by appellants in court, was withheld from

being paid to respondent, by appellant's own interdiction; and, as regards Cheonee Lal, that he is not before the court, nor is his *pottah* filed, nor aught else to shew the connexion, if any, between his lease and respondent's loan of the money sued for; of which only he was to pay the interest from the farm proceeds.

The decree passed is clearly just and proper; and is affirmed accordingly, with costs payable by appellant.

THE 4TH APRIL 1846.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 215 OF 1844.

Regular Appeal from a decree passed by the 1st Principal Sudder Ameen of Tirhoot, Niamut Ali Khan, May 3d, 1844.

SREE KISHEN SAHEE, RAM KISHEN SAHEE, AND MOOST. BERAJ KOWUR, MOTHER AND GUARDIAN OF RAM SUHAEE SINGH, THE MINOR SON OF THE ABOVE SREE KISHUN, APPELLANTS, (DEFENDANTS,)

versus

SHEO SUHAEE SAHOO, RESPONDENT, (PLAINTIFF.)

THIS suit was instituted by respondent, on the 25th July 1843, to recover from appellants the sum of Company's rupees 12,189-2-6, under a decree passed by the principal sudder ameen on the 21st December 1840, affirmed in the Sudder Court June 16th, 1842.

In the former case, respondent sued appellants to foreclose a mortgage of a 4 annas' share of mouzah Bhulwareh, under which he had made a loan to them of Sicca rupees 5,925. The mortgage bond was executed by Sree Kishun Sahee, son of Doonda Sahee, and Ram Surn Sahee, son of Jeolal Sahee, for themselves and on behalf of Rughonundun Sahee, a minor brother of Ram Surn; but the foreclosure sought was refused, the transaction being considered illegal with reference to the minority of Rughonundun; and respondent was authorised to sue Sree Kishun and Ram Surn, for

repayment of the amount advanced by him. The present suit was brought accordingly, to recover Sicca rupees 5,925, with interest.

Such is the purport of the plaint.

The answer on the part of the appellant Sree Kishun, sets forth, that, in 1238 F. (1831,) being in great distress, he borrowed 200 rupees from respondent in the month of Magh of that year; that respondent, taking advantage of his distress, stipulated for 24 per cent interest, besides certain cesses, such as guddeeaon, nuzzurana, &c., and exacted from him a bond for rupees 754; that, about a year after, he again applied to respondent, who advanced a further sum of rupees 100, taking from him a fresh bond for (including the amount of that before given) rupees 1125; that, about two years after this, he, with Ram Surn Sahee, applied once more to respondent, and received from him rupees 1,545, when an account was made out, inclusive of that connected with the two preceding transactions, shewing a debt to respondent of rupees 4000. For this debt, a conditional sale was executed of mouzah Chintamunpore, in pergunnah Ruttee, the cowaleh bearing date the 7th Assar 1241 (28th June 1834); but when the period of payment arrived, the account, composed as above, and bearing interest at 24 per cent, had reached rupees 5,925; which not being able to satisfy, another conditional sale was entered into on the 13th January 1836, for a 4 annas share of mouzah Bhulwareh. For possession of this, respondent sued; but the principal sudder ameen, deeming the excessive interest, as set forth, to be proved, dismissed the suit, authorising respondent to bring an action for the money actually advanced by him. The entire sum advanced by respondent, on the three occasions mentioned, amounted to rupees 1845.

The principal sudder ameen, on the ground of the sanction of the presiding judge (in the suit for possession of the land) to respondent's present action for the amount advanced by him; and of appellants' admission of the *cowaleh* executed by them; passed a decree for this claim, with interest.

The usurious interest pleaded by appellant having been established in the former suit, and Section 9, Regulation XV. 1793, declaring, that, where a greater interest than 12 per cent shall have been received, or stipulated to be received, the courts are not to give any other judgment, but for the dismission of the suit, with costs to be paid by the plaintiff; the decree passed by the principal sudder ameen cannot be upheld. It is reversed accordingly; with costs payable by respondent.

THE 6TH APRIL 1846.

PRESENT:

J. F. M. REID,

JUDGE.

A Petition for admission of a Pauper Appeal from the decision of the Judge of Moorshedabad, non-suiting the original plaint.

MRS. MARIA ROOTS AND MR. GEORGE ROOTS, PAUPERS, (PLAINTIFFS,) APPELLANTS,

versus

MR. THOMAS CLARK, T. FREDK. CLARK, THE MEMBERS OF THE HOUSE OF MESSRS. COCKERELL AND CO. AND OTHERS, (DEFENDANTS,) RESPONDENTS.

THIS suit was brought by the plaintiffs to recover possession of 12 annas of the Mysathul factory, and the whole of the Boodhol factory, with their dependencies, from the defendants, on the plea that the factories in question, the property of Mr. John Rose, (the first husband of Mrs. Maria Roots, who died in July 1832,) had been illegally sold to Messrs. Clark, by Messrs. Cockerell and Co. Suit laid at 47,235-7-1.

The defendants urged several pleas against the plaintiffs' claim, denying the justice of the claim, and right of the judge's court to entertain the suit. The judge, on the 14th June 1845, non-suited the plaintiffs, without stating the grounds on which his judgment was formed. On a petition for a pauper appeal being presented by the plaintiffs, the Court considered the decision of the judge incomplete, from the want of a record of the reasons which induced the judge to come to the decision, and, accordingly, admitting the appeal, direct that the case be sent back to the judge, with instructions to restore the suit to the file, and decide it, recording his decision in English, as required by Act XII. 1843.

THE 7TH APRIL 1846.

PRESENT:

C. TUCKER,

JUDGE.

PETITION NO. 27 OF 1845.

IN the matter of the petition of Purdeh Dibbya, filed in this Court on the 10th February 1845, praying for the admission of a special appeal from the decision of first assistant to the commissioner

of Assam, under date the 26th September 1844, affirming that of Roy Debbhur, sudder ameen of zillah Kamroop, under date 15th May 1844, in the case of Purdeh Dibbya, plaintiff, *versus* Maddub Ram Rajkhwa, defendant.

It is hereby certified, that the said application is granted on the following grounds:

In this case the plaintiff stated, that, during the life-time of her husband, the defendant borrowed from him an ornament called a "*seeteepatee*," valued at 250 rupees, and never either returned or paid for it. The defendant acknowledged having borrowed the ornament, but pleaded that he had returned it, though he had lost or mislaid the receipt granted for it by plaintiff's husband.

The defendant cited amongst others two respectable witnesses, who certify to his having returned the ornament in question, one, Preonath Phookun, holding the office of moonsiff, the other, Govindram Dekka, nazir of the collector's office.

Instead of summoning these two persons and taking their evidence on solemn affirmation, under Act V. 1840, the sudder ameen satisfied himself with calling on those persons for a report, on the strength of which he dismissed the plaintiff's claim, and his decision was affirmed by the first assistant to the commissioner.

This being contrary to the usage which prevails in every court, and altogether inadmissible as evidence, the case is remanded to the first assistant, who will return the proceedings to the sudder ameen, with instructions to proceed in the examination of the witnesses, cited by the defendant, according to law, and then to dispose of the case as to him may seem just and proper.

THE 7TH APRIL 1846.

PRESENT:

J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 162 OF 1844.

Regular Appeal from the decision of the Principal Sudder Ameen of Zillah Mymensingh.

GOLUCKNATH CHOWDREE, APPELLANT,

versus

MOOST. GOUR MUNEE CHOWDRAIN, WIDOW OF BHYROBENATH CHOWDREE, RESPONDENT.

Pleaders—Ram Pran Raee and Bunsee Budun for Appellant, and Ghoolam Sufdur, Pursun Koomar, and Mr. Skinner for Respondent.

A THIRD PARTY, KOUNLAKANT RAEE, ALSO APPEARED.

Pleaders—Sree Ram and Tarik Chunder.

CLAIM to set aside the adoption of Bhyrobenath Choudree by Dayameyee, widow of Kasheenath, and to obtain possession of certain zemeendaries, the property left by Kasheenath, deceased, with mesne proceeds, also a house; the whole suit laid at 98,666-10-8.

JUDGMENT OF MESSRS. REID AND JACKSON.

The plaintiff claims as next heir to Kasheenath Rae, deceased, the adoption of Bhyrobenath being asserted to be illegal and void; and the right of Kounlakant, who would otherwise be the next heir to the property, being affirmed to be set aside by a deed executed by him, renouncing the inheritance *(ladawee.)*

The defendant asserted that the adoption was good and valid, and had been in force for 29 years; had been acknowledged in courts of justice, and by the father of the plaintiff; and that if it were not valid, Kounlakant was the rightful heir, not the plaintiff.

On the 10th May 1844, the principal sudder ameen of Mymensingh, Mr. Mackey, dismissed the claim, considering the adoption good and valid.

On the 24th May 1844, the plaintiff appealed to this Court.

The plaintiff claims possession of the property as heir of the deceased Kasheenath, after the death of his widow, Dya Maye, who was entitled to possession during her life-time. He asserts that Dya Maye had no authority to adopt a son, and that Bhyrobenath Rai, who is stated by defendants to be her adopted son, has not been legally adopted.

It seems that even if the adoption was void and illegal, the plaintiff is not the next heir, but Kounlakant, &c., the other defendants, who are nearer of kin to the deceased, under the *koorsenameh* Plaintiff, however, contends that Kounlakant, &c., have forfeited all rights to succession by an ikrarnameh executed by them in favor of Dya Maye, to the effect that, doubts having been raised as to the validity of the adoption of Bhyrobenath, he, Kounlakant, being the next heir, in consideration of receiving immediate possession of five villages out of the estate, consents to waive his right to question the validity of the adoption, as well as to relinquish all his claim to the rest of the estate, on the ground of that adoption being invalid. This document is a very important one.

We have not, however, in this case to decide what are the rights of the defendants in the estate; but whether plaintiff is, as he claims to be, heir of the deceased Kasheenath. If the adoption is good and valid, the plaintiff's claim is evidently without foundation. If, again, the adoption is illegal and void, the next heir is Kounlakant, not plaintiff, unless Kounlakant has forfeited his right to succeed by the execution of this *ikrarnameh.* There are also some sons of Kounlakant now living.

We have then to consider the validity of this *ikrarnameh ; if valid,* it is binding on the parties to it; but cannot in any manner be allowed to affect the interests of third parties: if invalid, the arrangement between the persons, who are parties to it, must be set aside, and in that case there is nothing to prevent Kounlakant from coming in as heir to the property, if the adoption is illegal, but in neither case can plaintiff benefit by it.

With reference to the *bewusteh* of the *pundit,* we observe, that he assumes the *ikrarnameh* to be a *ladawee,* or entire relinquishment of right to inherit, but we find no such entire relinquishment in it. On the contrary, it only gives up the right of Kounlakant to question the adoption. The *bewusteh,* however, assumes as a basis a fact which does not exist, and we do not therefore think proper to be guided by it.

The evidence adduced to the point, that Dya Maye Chowdrain received authority to adopt, is not very satisfactory. Her own

denial in the former case No. 176, is not conclusive against the fact, provided good evidence were adduced to shew that denial to be untrue: but we see no necessity of deciding on the point of the legality of the adoption, because whether legal or illegal, the plaintiff is not thereby entitled to succeed. The ikrarnameh relates exclusively to the parties, who executed it. In our opinion there is nothing fraudulent in it to render it void; but it does not establish the plaintiff's claim, nor do any of the other documents or evidence filed in the case. We therefore dismiss the claim of plaintiff with costs, confirming the judgment of the principal sudder ameen, though without deciding on the validity of the adoption.

JUDGMENT OF MR. DICK.

The appellant instituted this suit, and founded his claim to the property in question by inheritance, on the ground of the widow of Kasheenath having no authority to adopt, notwithstanding which she adopted first one Sheeonath, whom she afterwards rejected for vile practices as unworthy; and then adopted Bhyrobenath, respondent's husband, with whom colluding, a suit was instituted by him against her to have his name registered in the collector's office as proprietor. In that case she filed an answer admitting the adoption, and also a deed given by Kounlakant (the third party) and Ram Soondur (his brother deceased) the heirs of Kasheenath, sister's sons, that they acknowledged the validity of the adoption, notwithstanding the widow of Kasheenath, Dayameyee, had in the case of Sheeonath denied her power to adopt; and that they would not avail themselves of that denial in any court of justice;—they at the same time receiving, from her and Bhyrobe, several mehals in the estate in question. The deed had been admitted by Kounlakant; and he and his brother by that act had foregone all right to that portion of the estate which they had given up; and consequently appellant claimed it as next heir.

The respondent contended that the power to adopt had been duly given, and filed a deed, or unoomuttee-putr; and that what had been inserted in her answer in the suit of Sheeonath, denying the power to adopt, was done merely to serve the purpose of the time.

Kounlakant came forward, avowing the genuineness of the deed given by him and his brother; but contending that, if the adoption was not held to be good, their right by inheritance returned to them.

The principal sudder ameen, deeming the power to adopt proved, upheld the adoption, and dismissed the suit.

I think we are bound to decide this case on the Hindoo law. The claim is essentially one of inheritance, and as such must be decided under Section 15, Regulation IV. 1793. The deed given by Kounlakant and his brother to the widow, has been admitted as genuine on all sides. Its effect then is the first point to be settled. To ascertain this, a reference was made to the *pundit* of the Court,

the constituted expounder of the Hindoo law; and to guard against any mistake, the deed itself was placed in his hands, and the relationship of the parties to the original proprietor clearly stated. His reply was, that whatever right Kounlakant and his brother possessed and had relinquished, belonged in consequence to the appellant as next heir. The correctness of this legal opinion has been called in question by the pleader of respondent, Pursun Koomar, on the pretext that the *pundit* had not given the whole of the passage of the authority cited by him. But the *pundit*, on being asked to explain, shewed that the rest of the passage did not apply to the point at issue; and this is apparent from the translation of it filed by Pursun Koomar himself. What goes before and after the portion quoted by the *pundit*, refers to possession obtained by force or fraud, not that voluntarily given up.

The right then of appellant to contest the validity of the adoption, appears indisputable.

This, in my opinion, he has done most successfully. He has proved the invalidity of the adoption, 1st, from the actual denial of it, nay, impossibility of it, as set forth by the widow herself, in her answer, filed in court, in the case of Sheeonath; 2d, by the minority of Kasheenath when the alleged permission was given, as proved by the testimony of the very witnesses brought to testify to the deed, the "unoomuttee putr;" 3d, by the non-production of the deed, or even mention of it till now, 60 years after its date, although several occasions occurred for filing it before the revenue authorities, and twice in a court of justice; 4th, by reference to the extraordinary conduct of the widow, who, not content with adopting respondent, wrote a deed of gift of the property, and not satisfied with that, entered into the agreement with the next heirs, who, probably from poverty, gave up their right to contend for the whole at her death, on receiving a small portion immediately, altogether clearly indicative of a knowledge that she had no right to adopt; 5th, by shewing that no credit was due to the witnesses who had deposed to the *unoomuttee putr*. I would therefore reverse the decision of the lower court, and decree the appeal with full costs.

THE 14TH APRIL 1846.
PRESENT:
R. H. RATTRAY,
JUDGE.

CASE No. 280 OF 1844.

Regular Appeal from a decision passed by the Additional Judge of Behar, William St. Quintin, August 20th, 1844.

MOHUMMUD HOSEIN, APPELLANT, (PLAINTIFF,)

versus

MOOST. WUZEERUN, MOHUMMUD HUSSUN KHAN AND OTHERS, RESPONDENTS, (DEFENDANTS.)

THIS suit was instituted by appellant, on the 5th March 1840, to recover from respondents possession of 814 beegahs of land belonging to mouzah Talunpoora, with *wasilut* (or mesne profits) from 1241 to 1246 Fuslee; the estimated value of the whole being Sicca rupees 7,000.

The decision appealed against is as follows:

'The plaint in this case is obscure; but it appears by the papers and evidence produced by both parties, that the dispute between them is whether or no the water-course recognised as 'pyn sahib chobah' (choorbur) is the boundary between the villages of Silwah and Talunpoora. This point is well disposed of by the magistrate of Monghyr, in his proceedings held on the spot on the 10th February 1835; wherein he declares and proves this 'pyn' to be the boundary. The plaintiff declares that the 814 beegahs of land, for which he has instituted this suit, is on the *western* side of the pyn, that is, on the side on which his purchased village of Talunpoora is situated. Now, the defendant declares he has no possession nor right of property on the *western* side of this pyn; and as there is no evidence sufficient to prove that the plaintiff has been dispossessed of land to the west of the pyn, and both parties agree that this pyn is the boundary between their respective villages, there is nothing to shew that the plaintiff has suffered detriment at the hands of the defendant. I therefore dismiss this suit, with all costs (payable) by plaintiff.'

After the perusal, through three days' sittings of the Court, of a mass of papers comprehending what is termed the evidence in this case, I cannot find any thing upon which a safe assertion might be grounded that a legitimate cause of action ever had existence; assuredly there is nothing to shew that appellant has been dispossessed by the respondents from what he claims (so far as that is

intelligible) within any given period to which these papers refer. Those of the earliest date speak of the existing boundary disputes and counter claims; but none fix their commencement; and the witnesses, with more or less of contradiction, depose to land quarrels between the parties, of twenty years' standing. There are no less than seven maps filed—two of them (both appellant's) being by regularly constituted revenue surveyors—of the respective estates; and on that of Talunpoora (appellant's village) is an original note by the surveyor, of the area, '830 beegahs' and a fraction. The present claim is for 814 beegahs; leaving 16 as the total now in the possession of appellant: a demonstration, with reference to the quantity actually in his occupancy, which might, of itself, be deemed, if not conclusive against, at least strongly adverse to, the pretended honesty of the claim preferred by him. It is needless, however, to dwell further on the question. Neither possession nor dispossession having been established, the decision of the lower court must necessarily be affirmed; which it hereby is, with costs payable by appellant.

THE 14TH APRIL 1846.

PRESENT:

C. TUCKER,

JUDGE.

PETITION NO. 23 OF 1845.

In the matter of the petition of Eshur Chunder Rae, filed in this Court, on the 27th January 1845, praying for the admission of a special appeal from the decision of Mr. Edward Bentall, judge of zillah Jessore, under date the 24th December 1844, reversing that of Kazy Mahomed Sabir, moonsiff of Kaloopool, in the said zillah, under date 16th July 1844, in the case of Eshur Chunder Rae, plaintiff, *versus* Mohun Doss and others, defendants.

It is hereby certified, that the said application is granted on the following grounds.

The plaintiff sued on a *cabooleut*, dated 12th Maugh 1241 B. S., to recover from the defendants rupees 229-7-4, breach of contract relating to indigo cultivation, and obtained a decree from the moonsiff. On appeal the judge nonsuited the plaintiff on the grounds that the details at the back of the *cabooleut* evinced a distinct responsibility in the three defendants; and therefore the plaintiff should have instituted a distinct and separate suit against each.

But I find in the body of the *caboolent* that the defendants make themselves responsible each for other in distinct terms. This being the case, I admit the special appeal, annul the order of the judge, and direct that he try the appeal *de novo* on its merits.

THE 14TH APRIL 1846.

PRESENT:

C. TUCKER,

JUDGE.

PETITION NO. 865.

IN the matter of the petition of Muharajah Kishen Kishore Manik, filed in this court on the 7th October 1844, praying for the admission of a special appeal from the decision of Mahomed Ali, principal sudder ameen of zillah Tipperah, under date the 26th August 1844 reversing that of molvee Mahomed Nazim, sudder ameen of the same district, under date 27th August 1842, in the case of Muharajah Kishen Kishore Manik, plaintiff, *versus* Rajchunder Dhur, Goordyal Dhur, and others, defendants.

It is hereby certified that the said application is granted on the following grounds.

The petitioner, plaintiff, sued the defendants, dependent talookdars in his zumeendary, to fix the *jumma* of their talook, and issued a notice under Section 9, Regulation V., 1812, to them, in which the jumma for the then current Bengal year was stated to be Company's rupees 945, 7 annas, 10 pie, 14 krants. The defendants denied the right of the plaintiff to enhance the jumma heretofore paid by them. The sudder ameen deputed an ameen to measure and assess the lands, which having been accomplished, that officer, considering the plaintiff's title to enhance the rent of the defendant's talook, (that is, to assess the lands comprised within it at the pergunnah rates,) to be clearly and fully established, decreed for the plaintiff an annual *jumma* of Company's rupees 786-11-4-13 krants. The defendants appealed from this decision, and the case was referred by the judge to the principal sudder ameen, who considered the plaintiff's title to assess the defendant's talook at the pergunnah rates to be unquestionable. He likewise approved of the ameen's proceedings and the *jumma* fixed, viz. Company's rupees 786-11-4-13 krants; but he nevertheless decreed for appellant, and nonsuited the plaintiff, because the notice did not, as required by Section 9, of Regulation V. 1812, make mention of the aggregate quantity of land in possession of the defendants, and because the names of all the proprietors of the whole talook were not included in the notice.

Now Section 9, Regulation V. 1812, does not require the quantity of land to be given in the notice, but only the specific rent which would be demandable for the current Bengal year.

With regard to not giving the names of all the proprietors of the talook, it appears the plaintiff issued the notice in the names of the persons who stood recorded in his zumeendaree sherishta as proprietors of the talook, and this is all he is bound to do.

The reason assigned, for the nonsuit being therefore clearly untenable, the plaintiff having conformed to the Regulations which govern this matter, I admit the special appeal, and direct that the case be remanded to the principal sudder ameen, for disposal on its merits.

THE 14TH APRIL 1846.

PRESENT:

C. TUCKER,

JUDGE.

PETITION NO. 1031.

IN the matter of the petition of Harookhan, and others, filed in this Court on the 11th December 1844, praying for the admission of a special appeal from the decision of Charles Mackay, principal sudder ameen of Zillah Mymensing, under date the 14th September 1844, reversing that of Rajkishen Bonnerjee, moonsiff of Chokey Kagmari, under date 11th May 1844, in the case of Harookhan and others, plaintiffs, *versus* Puddoo Lochun Biswas and others, defendants.

It is hereby certified that the said application is granted on the following grounds.

The principal sudder ameen reverses the decree of the moonsiff, which was in favor of the plaintiff, in these words:

'The respondent pleads that he was dispossessed from the lands, which he now sues to recover, in the month of Maugh 1235 B. S., from which date to the institution of the present suit, a period of thirteen years has elapsed; consequently, in the absence of any satisfactory explanation of the cause of delay, the case cannot be heard, under the provisions of Section 14, Regulation III. of 1793'. The plea urged by the petitioner, in his application for a special appeal, is that he distinctly stated in his plaint that he was dispossessed towards the close of the year 1237 B. S., from which date twelve years had not elapsed when he brought the present action. The papers before the Court ostensibly supporting the assertion of the petitioner, a copy of the original bill of plaint was sent for, and

at the same time the principal sudder ameen was directed to explain the apparent inaccuracy. The principal sudder ameen explains that in a case depending in the foujdary court, as stated in the magistrate's rooboocary of 23 Jeyte 1237 B. S., (4th June 1830 A. D.,) the plaintiff's *ryots* complained of having had their crops cut and taken away in Maug 1235 B. S.; and that the plaintiff could not shew that since that time he had, as stated in his plaint, been reinstated in possession by the magistrate's orders, and again dispossessed in Maug 1237 B. S., consequently he calculated the cause of action from Maug 1235 B. S.

If this be the case, it was incumbent on the principal sudder ameen to have recorded the circumstances in his decretal order, which without such explanation is at variance with the facts pleaded in the plaint. I therefore admit this special appeal, quash the decision of the principal sudder ameen, and direct that the proceedings be remanded, and that, calling the parties before him in due form, he embody in his decree the reasons and grounds on which it is founded.

THE 14TH APRIL 1846.

PRESENT:

C. TUCKER,

JUDGE.

PETITION NO. 1069.

IN the matter of the petition of Ishur Chunder Rae, filed in this Court on the 28th December 1844, praying for the admission of a special appeal from the decision of Mr. Edward Bentall, judge of zillah Jessore, under date the 1st October 1844, reversing that of Mr. J. N. Thomas, sudder ameen of said zillah, under date 23d April 1844, in the case of Ishur Chunder Rae, plaintiff, *versus* Abadoollah, defendant.

It is hereby certified that the said application is granted on the following grounds.

In this case the plaintiff having purchased, at a public sale made by the collector under Regulation VIII. of 1819, a putnee talook called Lot Nulta, sued the defendant, who held a *jumma* therein, to assess his lands, consisting of 525 beegahs 3½ biswas at an annual rent of Company's rupees 800.

The defendant pleaded that his jumma had been fixed by a decree of court at Company's rupees 621-7-3-2.

The sudder ameen decreed for plaintiff an annual rent, receivable from defendant, of Company's rupees 700-3-9. Both parties appealed to the judge, who reversed the sudder ameen's decision, on the

grounds that the plaintiff was not competent to cancel former engagements, and moreover, the defendant's rent having been fixed at Company's rupees 621-7-3-2, plaintiff must receive that sum, or, if dissatisfied, the defendant would be entitled to hold his lands at the rate of one Sicca rupee per *beega* under an old *pottah* he held, granted in 1219 B. S. by the former talookdar. The application for a special appeal is grounded on Clause 1, Section 11, Regulation VIII. 1819, under the provisions of which, he, as auction purchaser, is competent to annul former engagements, and to demand rent according to the rates of the *pergunnah;* and further that, in the case alluded to by the judge, there was no question of jumma raised or disposed of by the court. This I find to be true. At the time referred to, the defendant was under engagements to pay an annual rent of rupees 687-12-2 on 619 beegahs 10 biswas of land, but, having been dispossessed by his talookdar, he sued to recover the lands and got a decree, but could never get possession of more than 525 beegahs 3½ biswas of land, and eventually he sued for a corresponding reduction in his annual rent, which was decided in his favor, and the annual rent was reduced to Company's rupees 621-7-3½. Whilst this suit was pending, the *putnee* was sold, and was purchased by the plaintiff, who took the place of the late proprietor in the suit, and, in his pleadings, urged his right to assess the lands in possession of the then plaintiff at the pergunnah rates, which he contended were higher than those mutually agreed on between the plaintiff and the late *putneedar*. This right was reserved in the decree which passed on that occasion, which contained a clause to the effect that the question of the *pergunnah* rates could not be raised in that suit, which was brought for a reduction of the then existing rent under mutual engagements, in consequence of the plaintiff having been dispossessed of a portion of the lands on which that rent had been fixed. It is clear therefore the present plaintiff's rights as a purchaser under Clause 1, Section 11, Regulation VIII. 1819, are still in full force, and therefore the decision of the judge is contrary to law.

But I find that the plaintiff, though entitled to assess the lands in possession of the defendant at the *pergunnah* rates, has not pursued the course prescribed in Section 9, Regulation V. of 1812, and consequently under the following Section, 10, no greater rent is exigible by process of distress or confinement of person, *nor recoverable by suit in court*, than the defendant was bound to pay under his previous engagements.

I therefore admit the special appeal, on the grounds of the judge's decision being contrary to law as regards the rights and privileges of the plaintiff, and direct that the proceedings be returned to the judge, who, with reference to the preceding remarks, will dispose of the case *de novo*.

THE 20TH APRIL 1846.
PRESENT:
R. H. RATTRAY,
JUDGE.

CASE No. 229 OF 1845.

Regular Appeal from a decree passed by the 2d Principal Sudder Ameen of Tirhoot, Ushruf Hosein, June 23d, 1845.

MOOST. RAMESHUR KOWUR, MOOST. KURNPHOOL KOWUR, APPELLANTS, (DEFENDANTS,)

versus

DURBAREE LAL SAHOO AND OTHERS, RESPONDENTS, (PLAINTIFFS.)

THIS suit was instituted by respondents, on the 28th February 1843, to recover from appellants the sum of Company's rupees 38,837-5-4, due under a bond, bearing date Jeyt 22d 1243, Fuslee.

The respondents are members, or heirs of members, of a banking house: the appellants are the widows of Baboo Jugdeo Nurain Singh, and mother and step-mother of his two sons, minors, Koula Purshad and Luchmee Purshad; and at present in possession of the estate of their deceased husband.

The plaint sets forth, that Jugdeo Narain Singh, in the year 1243, F., borrowed and received from Beharee Lal Sahoo, a partner in respondent's house, the sum of 18,205 Sicca rupees; for which he executed a bond on the 22d Jeyt, that year, payable in four months, with interest at the rate of 12 per cent. per annum; that the money was not paid; that Jugdeo Nurain Singh died; that all the members of the house sue for the amount of the bond executed in favor of their late partner, such being customary; and that the account stands thus:

Principal money lent, Sicca rupees, ...	18,205	0	0
Interest on ditto,...	18,205	0	0
By exchange of the above to Company's rupees,.	2,427	5	4
Total Company's rupees,...	38,837	5	4

The answer of appellants, denies the execution of the bond by Jugdeo Nurain Singh. If it were what is asserted, why should respondents have allowed ten years to elapse before they brought their claim, is asked; and how can such a claim be entertained against these minors; and why was it not preferred when the borrower of the money was alive to answer it?

The bond was proved to have been duly executed, and the sum for which it was granted to have been duly paid and received; and a decree for the amount, with interest, was passed, payable from the estate of the deceased Jugdeo Nurain Singh.

In appeal, it was urged, that a bond for so large a sum would never have been accepted without being duly registered, or authenticated by the kazee. On examining the document, the first attraction was, the record of its registry; endorsed upon it in a large distinct hand, and bearing date the 25th May 1836, the date of the bond itself (Jeyt 22d, 1243, F.) corresponding with the 23d of the same month.

The claim of respondents being clearly and satisfactorily established; and there not appearing any ground for interference with the decree of the lower court, I affirm that decree, with costs payable by appellants.

THE 20TH APRIL 1846.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 242 OF 1844.

Special Appeal from a decision passed by the Judge of Behar, Charles Garstin, July 10th 1843; affirming a decree passed by the Moonsiff, Mohummud Ushruf, March 30th, 1841.

MEHR ALI, APPELLANT, (DEFENDANT,)

versus

ROSHUN LAL, RESPONDENT, (PLAINTIFF.)

THIS suit was instituted by respondent on the 15th September 1838, to recover from appellant certain lands situated in mouzah Mohummudpore-kulas, *alias* Burheebeegah: 3 jummas estimated at rupees 43-13-5-10.

The special appeal against the decree of the lower courts, was admitted on the apparent violation of the law of limitation, involved in the judgment passed in favor of respondent, after the lapse of the period prescribed by Section 14, Regulation III. 1793.

Respondent sued for possession of an 18 dams, 5 cowries, 10 boorees' share, more or less, of a 5 annas, 6 dams, 13 cowries' share of the entire mouzah above named, the defendants sued, being Moost. Roop De, widow of Bhogee Lal, Bheem Lal, son of Horil Singh, and Gholam Muheeodeen, father of appellant. The property had belonged to Horil Singh, respondent's grandfather. On the death of Horil Singh, his three sons inherited, in equal portions, of 1 anna, 16 dams, 11 cowries' each. Bhogee Lall died in 1225 F., leaving his widow Roop De, to whom Bheem Lal and Sohun Lal (respondent's father) agreed to allow the profits arising from her deceased husband's share (which had been let on lease by him) as maintenance; and this has been received by her. In 1227 F. respondent's father died; he (respondent) being at the time about ten years old. After a while, Moost. Roop De, on pretence of marrying her daughter, gave Lala Juggoo Lal her husband's share in farm; and in collusion with Bheem Lal and Muheeodeen, which latter, under an alleged lease, holds possession, is about to alienate, what she has no right to whatever beyond that of deriving from it a maintenance.' Respondent sued before in 1838; but the *tullubana* (diet money) not having been paid on the 31st July of that year, the suit was dismissed.

The above is the statement of respondent, as plaintiff; and it is sufficient to observe, that, assuming the cause of action to have arisen in 1227 F., on the death of his father that is, and allowing five years for the attainment of his majority, in 1232, above twelve years had elapsed before the suit was instituted; and, under the statute of limitation, the claim should not have been entertained. Against this, nothing is pleaded on the part of respondent; and we accordingly reverse the decree of the lower courts passed in his favor; and, without entering into the question of appellant's title as son of the lessee Gholam Muheeodeen, but recognising him as the acknowledged occupant of the land in dispute, we confirm him in possession till ousted in due course of law.

All costs to be paid by respondent.

THE 22D APRIL 1846.
PRESENT:
A. DICK,
JUDGE.

CASE No. 114 OF 1842.

Special Appeal from the decision of the Zillah Judge of the 24-Pergunnahs.

MUHESH CHUNDER KUR CHOUDREE, &c. AND RAM CHUNDER SIRCAR, APPELLANTS, (DEFENDANTS,)

versus

HUR LAL MITR, AUCTION PURCHASER—THEN, NUBKISHEN SING, GUARDIAN OF CHOONEE LAL MITR, SON AND HEIR, MINOR—THEN, KAMINEE DASSEE, WIDOW OF HURLAL, AND MOTHER OF CHOONEE LAL, RESPONDENT, (PLAINTIFF.)

Pleaders—Ghoolam Sufdur, for Appellants, and Pursun Koomar, Bunsee Budun, and Neel Munee, for Respondent.

SUIT laid at 4635 Company's rupees, 6 annas, and 8 pie, to recover amount deposited in a suit under Regulation V. 1812, to reverse that suit, and to establish right to the land in dispute—1384 beegahs, 7 cottahs, in his estate, purchased at public sale for arrears of revenue. The plaintiff, Hur Lal Mitr, purchased the estate of the defendants, Muheish Chunder, &c., sold at public auction for arrears of revenue; and he was put into possession in the usual mode. The defendant, Muheish Chunder, &c., afterwards distrained the property of the defendant, Ram Chunder Sircar, a ryot, and petitioned for its sale. To this the plaintiff objected, and deposited the amount claimed. He now sued for right to the land in the possession of the said ryot, as part and parcel of the estate he purchased, and for recovery of the sum he deposited. The defendants, Muheish Chunder, &c., claimed the land in question as part *theeka*, a fixed rent tenure, and part rent-free, which they let to the ryot Ram Chunder, and asserted that it was exclusive of the *maal* or revenue land of the estate.

The principal sudder ameen rejected the proofs adduced by the defendants, Muheish Chunder, &c., to the truth of their defence, and decreed the suit in favor of plaintiff, leaving the defendants to sue for the rent-free land alleged to be their's. The judge affirmed that decision—and this special appeal was granted in consequence of the impropriety of the principal sudder ameen's decision, who, in a suit to reverse an order passed under Regulation V. 1812, intimated to

the defendants, that they were at liberty to sue for their alleged rent-free land.

JUDGMENT.

There was no necessity for the plaintiff to deposit the amount, unless for the ryot, if with him, and then the ryot should have sued to contest the demand under Regulation V. 1812. This part, therefore, of the plaintiff's claim, is inadmissible.

His suit, however, for right to the land as part and parcel of his zumeendaree is proper enough, though he might have sued for settlement of rent, *nushisht jumma*, or to annul the tenures of fixed rent, *theeka*, and rent-free *lukhiraj*, on which defendants found their claim.

The defendants, appellants, have contested the claim of plaintiff, respondent, on two grounds: 1st. that the larger portion of the land in dispute is their's on *theeka*, a fixed rent and hereditary tenure. To substantiate this, they have filed a deed of sale, dated 1196 B. Æ., and a decision of the *maal adawlut* of the 24-Pergunnahs, dated 1791, A. D., and copies of *jumma-bundee* papers of 1190 B. Æ., both corroborative of the deed of sale, also certain alleged canoongoe's papers; 2nd, that the remainder of the land is rent-free. To prove this, they file copy of a deed of sale, obtained from the collectorate, where it is said the original, now not forthcoming, was filed at the preparation of the *taeedad* in 1204 B. Æ., also copies of the *taeedad* and *jumma-bundee* of 1190, B. Æ.

The decision of 1791, is certainly corroborative of the deed of sale of 1196, B. Æ., inasmuch as mention is made in it of a portion of the land inserted in the deed; and the deed itself appears to have been filed before the ameen deputed in that case, as it bears the signature of the judge. The copies from the *jumma-bundee* papers of 1190, B. Æ., require to be compared with the originals. If there be no reason to think the originals have been mutilated or changed, they should not be rejected merely because they are not authenticated by official signature; for their existence is notorious, and a translate of a portion of them, in minute detail, was published by Mr. Gladwin in 1798, as a specimen of putwaree accounts. The copies of the alleged canoongoe's papers likewise require to be compared with the originals as do the copies of the deed of sale of the rent-free land, and of the taeedad. Therefore, the case is remanded. The judge will replace it on his own file, and, after comparing the copies with the originals in the collectorate, and calling for any further evidence he may deem requisite, or the parties may produce, decide.

The several documents presented for the first time, in this Court, were received, because they are evidently indispensable to the formation of a correct decision, and because the principal sudder ameen neglected to conform to Section 10, Regulation XXVI. 1814.

THE 22D APRIL 1846.
PRESENT:
A. DICK,
JUDGE.

CASE No. 111 OF 1842.

Special Appeal from the decision of the Zillah Judge of the 24-Pergunnahs.

SUIT laid at Company's rupees 365, 3 annas, 6 pie, 1.

CASE No. 112 OF 1842.

Special Appeal from the decision of the Zillah Judge of the 24-Pergunnahs.

SUIT laid at Company's rupees 335-0-0.

CASE No. 113 OF 1842.

Special Appeal from the decision of the Zillah Judge of the 24-Pergunnahs.

SUIT laid at Company's rupees 379-1-0.

CASE No. 115 OF 1842.

Special Appeal from the decision of the Zillah Judge of the 24-Pergunnahs.

SUIT laid at Company's rupees 346-1-0.

JUDGMENT.

The parties in these suits, and their pleaders, are the same; and their claims of a like nature, and founded on similar proofs, as in the above case No. 114 of 1842. The judgment consequently is precisely the same.

THE 23D APRIL 1846.

PRESENT:

A. DICK,

JUDGE.

CASE No. 141 OF 1843.

Regular Appeal from the decision of the Additional Principal Sudder Ameen of the 24-Pergunnahs, Huree Chunder Ghose.

BAJ PAEE, MAHARAJAH DUMOODUR CHUNDER DEYB FOR HIMSELF AND AS ATTORNEY FOR RAJAH KISHOBE CHUNDER DEYB AND RAJAH SREEDHUR CHUNDUR DEYB, APPELLANTS, (DEFENDANTS,)

versus

RAJ KISHOON NAG, RESPONDENT, (PLAINTIFF,)

SUTHBAHMA DASEE, THEN RAM GOPAL BHOSE, ATTORNEY FOR KOORNA NAG AND OTHERS, 3D PARTY OBJECTORS.

Pleaders.—Sheeoo Narain Chatoorjeeah for Appellants, Raj Narain for Respondents, and Neelmunee Banorjee for Objectors.

SUIT laid at Company's rupees 13,802, 1 anna, 6 gundahs, 2 cowries, 2 krants, for possession on 1 anna, 13 gundahs, 1 cowrie, 1 krant, of talook Bhuwaneepoor.

Originally the plaintiff, Raj Kishoon Nag, sued for possession on 9 annas, 13 gundahs, 1 cowrie, 1 krant, of the talook, on the statement that 8 annas were purchased in the name of Doorga Purshad, his cousin, and 1 anna, 13 gundahs, 1 cowrie, 1 krant, in the name of Suthbahma Dasee, Doorga's widow, with the money of his, Raj Kishoon's mother, *streedhun,* and that he had obtained possession, and was afterwards ousted. The suit was decreed, and no appeal preferred regarding the 8 annas. The appellants deny the sale of the 1 anna, 13 gundahs, 1 cowrie, 1 krant, and appeal against that portion of the decree.

The third party, Suthbahma Dasee, came forward, objecting *in toto* to the decision. She declared the 8 annas were acquired by her husband Doorga Purshad, with his own means, and the 1 anna, 13 gundahs, 1 cowrie, 1 krant, in her name also purchased by him; that the plaintiff had acted for her in the Supreme Court in a case regarding the 8 annas, and had now fraudulently filed an answer in this case as from her, admitting his claim; and that she had been kept in ignorance of the suit while pending in the zillah, being a recluse woman, living in the same premises as plaintiff.

JUDGMENT.

The case is remanded. It appears that the plaintiff's mother is alive, his father is alive, and his elder brother is alive: how then comes plaintiff alone to sue? this he has not shewn. The judge will require him to explain—2. He will ascertain whether the answer of Suthbahma Dasee was filed by her, or fraudulently, as she avers—3. If she did file it, or authorize its being filed, and the plaintiff be truly proprietor on the deeds, then to require proof of his having been in possession and ousted from both purchases at one and the same time; otherwise the cause of action being two and distinct, he must be nonsuited. Finally, should the suit be admissible, he will enter into the merits of the purchases, especially of the 1 anna, 13 gundahs, 1 cowrie, 1 krant, and decide; disposing at the same time of the claims of the defendant Kaleenath, and not leave them for another suit, as done by the principal sudder ameen.

THE 23D APRIL 1846.

PRESENT:

R. H. RATTRAY and
C. TUCKER,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 122 OF 1844.

Special Appeal from a decision passed by the Principal Sudder Ameen of Shahabad, August 1st, 1843; affirming a decisionpassed by the Sudder Ameen of Arrah, September 6th, 1842.

DHOUL PANDEE, APPELLANT, (PLAINTIFF,)

versus

LOTUN RAEE, DUSRUT RAEE, AND OTHERS, RESPONDENTS, (DEFENDANTS.)

THIS suit was instituted by appellant on the 14th January 1841, to cancel a *cowaleh* (or bill of sale) for a half share of mouzah Devee Dehra, pergunnah Chounsa, sold by appellant to Lotun Raee and others, respondents, for Company's rupees 800.

The sale set forth, was made, as stated, for Company's rupees 800; but the purchase money not being paid in full, 400 rupees remaining due, the *cowaleh* was lodged with the respondent Dusrut Raee, with the understanding of all concerned, that it was not to be given over to the other respondents till the balance should be forthcoming. It

was given up however, in violation of what had been agreed to, no portion of the money still due by respondents having been paid by them; and with reference to these facts, appellant claimed to have the *cowaleh* cancelled.

The non-payment of half the purchase money was admitted by respondents; but the lower courts decided, that such non-payment was not a legal ground for cancelling the sale of the lands: but they did not enter upon the allegation of the *cowaleh* having been lodged with Dusrut Raee, and surreptitiously obtained from him by the purchasers; and on this point a special appeal was admitted.

The Court deeming the agreement entered into by the parties respectively, to have been palpably infringed and violated under the circumstances exhibited on the proceedings of the case, reverse the decisions of the lower courts; and decree, that the *cowaleh*, to cancel which the suit was instituted, be cancelled and of no effect. All costs to be chargeable to respondents.

THE 30TH APRIL 1846.

PRESENT:

R. H. RATTRAY and
C. TUCKER,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 77 OF 1844.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Bhagulpore, December 9th 1843.

BEHAREE SING'H AND OTHERS, APPELLANTS, (PLAINTIFFS,)

versus

CHETOO CHOWDHREE, DECEASED, AND GOOROO DUTT, HEIR OF DITTO; RAMSURN DAS AND AJUD'HEA DAS, PURCHASERS OF 8 ANNAS SHARE FROM CHETOO CHOWDHREE; CHINTAMUN SING AND OTHERS, PURCHASERS OF 8 ANNAS SHARE FROM RAMSURN AND AJUDHEA DAS; RAMDIAL, PURCHASER OF 4 ANNAS SHARE FROM CHETOO CHOWDHREE; AND LALJEET AND OTHERS, PURCHASERS OF RAMDIAL'S 4 ANNAS SHARE AND OF 4 ANNAS SHARE FROM CHETOO CHOWDHREE, RESPONDENTS, (DEFENDANTS)

THIS suit was instituted by appellants on the 22d December 1841, to recover from respondents half of mouzah Pursúrman and others, three mouzahs, held in excess of lands purchased at the collector's sale, September 14th 1836; with *wasilât* (or mesne profits)

for 1245 Fuslee, and the same, with interest to the date of re-possession. The whole estimated at Company's rupees 8500.

The plaint is to the following purport:

Talook Surpōl comprehends eight, villages: viz. Pursúrman, Pursónee, Puttee Bulleās, Surpōl and others, situated in purgunnah Mulhúnee Gopâl; a settlement for which was made in 1197 Fuslee. In 1207 F, five hundred beegahs, being the *malikâna* lands of the above-mentioned Pursúrman, together with mouzah Shushbúnee, were separately assessed at Sicca rupees 744-13. Of both these villages plaintiffs are half proprietors; the remaining moiety belonging to Ajeet Sing, Mitrjeet Sing, and others. At the time of the settlement, objections were made to plaintiff's possession by Ajeet Singh, which led to an action on the part of Kunchun Singh and plaintiffs, against him, which was decided in their favour, and their names were registered as half sharers with him (Ajeet) and others; but Ajeet, determined to get rid of them, allowed the Government revenue to fall into arrear, and thus brought on a sale. The sale advertisment does not specify the villages to be disposed of; but merely 'Pursúrman 2 villages, settled in 1207, confirmed in 1211, *sudder jumma* Sicca rupees 744-13.' (The plaint then details the boundaries of these lands.) The sale took place on the 14th September 1836, corresponding with the 19th Bhadoon 1243 Fuslee, and Chetoo Chowdhree, jointly with Mitrjeet and others, purchased the property. Chetoo admitted Ramdial Misr as a 4 annas sharer, and Ramsurn Das and Ajud'hea Das to an 8 annas share; but he afterwards took back Ramdial's 4 annas share, and sold an 8 annas share to Mitrjeet, in the name of Laljeet Sing'h and others, his sons and nephews. The other moiety sold to Ramsurn Das and Ajud'hea Das, was afterwards purchased by Chintamun Singh and others. Mitrjeet keeping up the old grudge, thought the present a good opportunity of ousting plaintiffs from their rights in the estate; so gave a farm-lease, through his sons, &c. of mouzahs Pursúrman, and Pursonee, and Puttee Bulleās, *uslee* and *dukhlee* (original and conjoined) settled for in 1197, F. to Ramsurn Das and Ajud'hea Das, declaring them to be his half share of the estate purchased. Besides this lease, he gave a separate agreement to pay all the expenses of the foujdaree proceedings attending the acquisition of possession. Hence arose the necessity of the present action.

In answer, Chintamun and the rest refer to the proceedings of the collector on the occasion of the sale, to shew that the villages contested were actually sold to Chetoo Chowdhree, when the *jumma* exhibited, Sicca rupees, 744-13, was admitted to be the Government revenue. They object to the valuation of the claim of the plaintiffs as opposed to Regulation X. 1829, Schedule B, Article 8, and to Construction No. 1047.

The principal sudder ameen, taking the sale advertisement and the proceedings of the revenue authorities as the ground of his

judgment, determined that the whole estate of Pursúrman had been sold; and rejected the claim set forth by appellants.

In appeal, the Court found that the dispute in this case arose out of the fact of portions of the same village having been settled at different periods, viz. in 1197 and 1211 Fuslee; each portion constituting a distinct estate, with a distinct *jumma*. The estate engaged for in 1197 Fuslee, consisted of five villages *uslee*, and three *duk'hlee*, (original and annexed,) and was assessed at an annual *jumma* of Sicca rupees 1007-9-9; that engaged for in 1211 Fuslee, comprehended two villages *uslee* and a portion of one other, and was assessed at an annual *jumma* of Sicca rupees 744-13. This latter estate was sold; and the purchaser, availing himself of an error in the sale advertisment, took possession of lands included in the former.

In order clearly to ascertain of what the two estates consisted, the Court called for detailed information on this point, from the collector; and the following abstract exhibits the result of the requisition:

Settlement of 1197 Fuslee:

Talook Surpol, 5 mouzahs *uslee* and 3 *duk'hlee;* annual jumma, sicca rupees 1007-9¾, viz:

	Sa. Rs.		
Bulleās *duk'hlee* of mouzah Pursúrman, ...	44	4	0
Pursúrman, 2 mouzahs *uslee*, ...	240	2	9
Surpōl, 3 mouzahs *uslee*, 2 ditto *duk'hlee*, ...	723	3	1
Total Jumma...	1007	9	10

Settlement of 1211 Fuslee:

Pursúrman, with Beesputtee, settled permanently in 1211 Fuslee, at an annual *jumma* of sicca rupees 744-13.

Beesputtee, 2 mouzahs *uslee; jumma*, ...	12	7
Pursúrman, none, *uslee* or *duk'hlee*, ...	732	6
Total Jumma...	744	13

It was explained by the collector, that the lands assessed under the head of mouzah Pursúrman in 1211 Fuslee, consisted of the malikana lands of Ajeet Singh, who was the proprietor of the other estate settled in 1197 Fuslee, and which, up to that time, had been held free from assessment.

From this, it will be seen, that mouzah Pursurman appears in both estates, and that it consists of two *uslee* villages; whilst the collector states, that there is no record forthcoming shewing the quantity of land appertaining to mouzah Pursúrman, which was assessed in 1211 Fuslee.

The error in the collector's proceedings was this:—The property sold was described as 'the entire *mouzah* of Pursúrman, &c., consisting of two *mouzahs uslee*;' whilst the amount of *jumma* and date of settlement, leave no doubt as to which of the two estates above-mentioned, it was intended to sell. The two *mouzahs* in the estate sold, are, as shewn, designated by the name of Beesputtee; and, owing to this error, the purchaser contrived to get possession of the whole of *mouzah* Pursúrman and its dependencies. Owing to the deficiency of statistical records in the collector's office, it has been found impossible to define how much of mouzah Pursúrman appertains to the two estates respectively: and under these circumstances, the Court are of opinion, that the only equitable mode of disposing of the case before them, is to have the village measured and valued, and to give to the parties in proportion to the jumma payable by each respectively. Mouzah Pursúrman, two *mouzahs uslee*, is assessed at sicca rupees 240-2-9, in the estate settled in 1197 F.; and in that settled in 1211 F. at sicca rupees 732-6.

The Court therefore decree for the appellant; and direct that the collector measure the village, and allot to each estate lands in value and assets proportioned to the *sudder jumma*, as above set forth. Costs to be paid by respondents.

THE 30TH APRIL 1846.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 266 OF 1844.

Regular Appeal from a decree passed by the Additional Judge of Behar, W. St. Quintin, July 4th, 1844.

DURBIJEI SINGH AND KHOORSHED ALI, APPELLANTS, (DEFENDANTS, WITH OTHERS,)

versus

NADIR BIBI, RESPONDENT, (PLAINTIFF.)

THIS suit was instituted by respondent on the 9th September 1843, to obtain the reversal of the sale of certain lands, and a rescission of the order confirming the same, on the ground of error and irregularity, rendering the said sale illegal. The suit was laid at Company's rupees 11211-10-13-18, being 3 jummas of one-fourth of the mehal comprehending Pakurdeh Muliharee, mouzah Imamgunge, Kusbah Shuhurghatee and others, sold in satisfaction of a decree of court, to realise the fees of three wukeels employed in a pauper suit, due by respondent.

The decree of the additional judge is as follows:—' There are two points to be decided in this case: 1st, as to the demands of the wukeels, and the process for realising them: and 2dly, as to the validity or otherwise of the sale held by the collector. The fees were evidently due; and as they were due on behalf of a pauper, the sale process was the regular course. The sale appears to me to be irregular from first to last. It was evidently the intention of the wukeels, Sheikh Moozhur Ali, Surajodeen, and Hosein Ushruf, to sell up three portions of Nadir Bibi, the plaintiff's property, viz. Pakurdeh Muliharee, Imamgunge and Kusbah Shuhurghatee. This is proved by the *taleeka,* the sale *nukshuh,* and the reply of Hosein Ushruf. The sale proclamation does not agree with either the *taleeka* or *nukshuh;* and puts up for sale no less than the plain-

tiff's share in 245 villages 15½ kunwas; and this was sold: and the purchasers have got possession of Nadir Bibi's share in the whole *talooka* of Pakurdeh, of which Muhal Pakurdeh Muliharee, Imamgunge (*alias* Jerah,) and Kusbah Shuhurghatee, are component portions. The plaintiff produces ample proof that *Talooka* Pakurdeh is composed of *eleven muhals*, of which Pakurdeh is *a muhal.* Besides, the sale is vitiated in consequence of the sale proclamation having been drawn out contrary to the provisions of Clause 2, Section 3, Regulation VII. of 1825. The actual amount due was not stated in the proclamation. The collector was distinctly told, in a proceeding of this court, dated 19th July 1842, that the portion due to the wukeel Ushruf Hosein had been satisfied, and that the sale was to be held only for the arrear due to the other two wukeels. This was not done: and the *ishtehar* was made out for the amount due to the three wukeels.

For the above reasons, I give the plaintiff a decree, with all costs, and usufruct from the date of dispossession: and I must further record in this case, that I consider that there is strong presumption of collusion in the sale on the part of the collector's omlah. The purchasers (one a wukeel of the principal sudder ameen's court, by name Khoorshed Ali, and the other Durbijei Singh, who has on another occasion been accused before me of having been the proxy of Ameer Ali, the collector's surishtedar, in a sale purchase) have volunteered in this case to defend Ameer Ali; and the evidence of the witnesses produced by the plaintiff to prove the collusion, induces great suspicion against the surishtedar.'

With this decree the Court do not see any reason to interfere, further than to correct the illegality involved in the award of the usufruct of the land, to respondent, 'from the date of dispossession. It is claimed by him (as plaintiff) only from the date of the institution of the suit; and of course cannot legally be adjudged for a prior period. With this modification, the decree is affirmed, with costs payable by appellants and respondent respectively.

Another distinct appeal is before the Court, on the part of Ameer Ali, the collector's surishtedar, against that part of the decree which renders him liable to a portion of the costs consequent on the decision: the Court's order on that appeal will be found recorded under another number, viz. 272 of 1844.

THE 30TH APRIL 1846.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE NO. 272 OF 1844.

Regular appeal from a decree passed by the Additional Judge of Behar, W. St. Quintin, July 4th 1844.

AMEER ALI, APPELLANT, (DEFENDANT,)

versus

NADIR BIBI, RESPONDENT, (PLAINTIFF.)

THIS is the appeal from the decree exhibited in the case disposed of under No. 266, and alluded to in the concluding clause of the Court's proceeding in that case, of the present date.

There is nothing in the record to shew that the appellant was, directly or indirectly, a party to the sale which led to the action in the zillah court; and consequently nothing upon which costs might be adjudged against him. At the same time, there is no proof of collusion on the part of the other defendants in the suit; and the Court deem it equitable and proper to decide, that the costs from which the appellant, Ameer Ali, is hereby exempted, be made payable by the respondent, Nadir Bibi.

To the Civil Authorities.

The 13*th March*, 1846. *Commitments for forgery.*

Constructions Nos. 454, 820 and 1221, and the Circular Order, Nizamut Adawlut, No. 14, dated the 5th December 1828, having received the re-consideration of the Courts of Sudder Dewanny and Nizamut Adawlut, for the Lower and North Western Provinces, and being found at variance with other instructions* on the same subject, which declare preliminary enquiry and commitment, in cases of forgery, brought to light in the course of judicial proceedings, to be the peculiar duty of the civil courts, are hereby rescinded.

* Construction 572 para. 3. Construction 704, and C. O. No. 169, of 29th May, 1835.

2. In such cases, it will be no longer optional with the civil courts, as implied in the several Constructions and the Circular Orders hereby revoked, either to commit the accused for trial before a special sessions or to direct a prosecution for forgery, or to declare the party aggrieved by such forgery at liberty to institute a prosecution in the criminal court, as to them may seem fitting; but it will be incumbent on those courts, in all cases of forgery brought to light in the course of judicial proceedings, to conform strictly to the rules prescribed for adoption in cases of perjury by Section 2, Regulation III. of 1801, Section 3, Regulation VII. of 1813, Section 14, Regulation IV. of 1793, (corresponding with Section 8, Regulation III. of 1803,) and Section 14, Regulation XVII. of 1817.

3. The same rule is considered to be applicable, *mutatis mutandis*, to cases of forgery, brought to light in the course of judicial proceedings in a criminal court.

4. These instructions are not intended to exclude from the cognizance of the magisterial authorities, criminal prosecutions for forgery, which may be instituted irrespectively of proceedings in any civil or criminal court.

To the Civil Judges.

The 11*th April*, 1846. *Moonsiffs' Cutcherries.*

The Court have reason to believe that the moonsiffs have not generally availed themselves of the permission accorded to them by the 4th paragraph of the orders of Government of the 18th June last, No. 1113, to draw on the district treasuries to the extent of rupees 75, for the purpose of erecting new cutcherries apart from their private dwellings. They direct therefore that those moonsiffs who have not yet erected buildings for cutcherry in your district, be required to do so without delay.

To the Civil Judges.

The 17*th April,* 1846. *Decisions recorded in English.*

The Government having been pleased to determine that the decisions of the zillah judges, recorded in English, under Act XII. 1843, shall be printed monthly at the presidency, I am directed by the Court to request that, from the 1st May next, the decisions of your court, instead of being copied into a book, in the manner directed by the Circular Order of the 28th February, 1845, be transcribed on separate sheets of paper, and forwarded at the end of each month to this office, with a view to their being sent to the press. Each decision is to be copied as soon after it is passed as may be practicable, so as to allow the whole of the decisions to be despatched within a day or two of the close of the month. Proper care is to be taken in your office to ensure the perfect accuracy of the transcription.

2. When there are no decisions in any month, the circumstance is to be reported to the Court, by the judge; and if there be no judge, by the officer in charge, immediately on the expiration of the month.

To the Civil Authorities.

The 1*st May,* 1846. *Statement of Stamp Fees in Pauper Suits.*

Pursuant to the instructions of the Government, the Court direct that a statement, in the subjoined form, on account of your own and the subordinate district courts, be furnished monthly to the collector, to enable that officer to take measures for recovering the amount due to the Government on account of stamp fees in pauper suits.

Statement of Pauper Suits decided in the month of ——— 184—
in the Courts of Zillah——

Court in which the Suits are decided.	No. of Suits.	Names of Parties.	Amount due to the Government on account of Stamp fees.	Party declared liable for the amount.

To the Civil Judges.

The 27th March, 1846. *Maharaja Juggut Indur Bunwary Lall.*

I am directed by the Court to transmit to you a copy of a reply, in Persian, sent from the office of the Secretary to the Government of Bengal, to an Urzee of Maharajah Juggut Indur Bunwary Lall Bahadur, of Moorshedabad, and to request that effect be given to the orders of the Honorable the Deputy Governor, as regards the style of address to be adopted towards that individual, as indicated in the above-mentioned reply.

نقل

خط بنام مهاراجه بنواري لعل بهادر بمورخهٔ هجدهم ماه فبروري سنه ۱۸۴۶ مسيحه

شرح آنکه

مهاراجه صاحب مشفق بسيار مهربان دوستان سلامت مکاتبهٔ الفت طراز مع خريطه بنام نامي و اسم سامي بندگانعالي متعالي جناب مستطاب معلى القاب دپيوتي گورنر بنگال دام اقباله متضمن بمطالب چند شانه کش گيسوي وصول گرديده باعث انکشاف مطالب مندرجه و سبب شادي و نشاط بي اندازه گشت بدستور قديم به پيشگاه معدلت پناه بندگان محتشم اليهم مستعد گرديد چنانچه بپاسخ آن آنچيکه از طرز ارشاد نوابصاحب ممدوح منبسط و مستدرک گرديد محول بخامهٔ محبت شمامه ميگردد مشفق من نقل مکاتبهٔ الفت طراز هذا بذريعهٔ چتهي انگريزي موافق ضابطهٔ قديمه بحکمهٔ صدر دورة ربنوابلاغ داشته خواهد شد

تا حکام اضلاع و امصار القاب سکرتري درمراسلات
ومکاتبات بآن مهربان ملحوظ ومرعي خواهند داشت
واستدعای پروانهٔ راهداري که ساخته اند درینولا
اصلاً ضرورت آن ندارد زیراچه در قلمرو سرکار
ابد پایدار رفع اسباب و لوازمات و حشم و خدم
مهاراجگي بدستور قدیم بهرجا که خواهند احدی و
متنفسی مانع ومزاحم آن نخواهد شد چشم است که
این الفت پرست را دوام مشتاق ادراک خیریتهای
خود دانسته بترقیم مکاتبهٔ الفت طراز اطلاع مینموده
باشند زیاده چه برطراز د فقط .

To the Criminal Authorities.

The 10*th February*, 1846. *Criminal Statements.*

The Court are pleased to prescribe the following additions to the rules for the preparation of criminal statements.

Supplementary rules for the preparation of the Magistrates' Statements.

Para. 136. Whenever any individual, having been acquitted of a penal act on the ground of insanity, and detained in confinement in default of security, may be entered in part 5, of statement No. 2, magistrates will be pleased to append a note in the margin, distinguishing him from others exhibited in the same part and statement.

To the Criminal Authorities.

The 13*th March*, 1846. *Commitments for forgery.*

Constructions Nos. 454, 820, and 1221, and the Circular Order, Nizamut Adawlut, No. 14, dated the 5th December 1828, having received the re-consideration of the Courts of Sudder Dewanny and Nizamut Adawlut, for the Lower and North Western Provinces, and being found at variance with other instructions* on the same subject, which declare preliminary enquiry and commitment, in cases of forgery, brought to light in the course of judicial proceedings, to be the peculiar duty of the civil courts, are hereby rescinded.

* Construction 572 para. 3. Con. 704 and C. O. No. 169, of 29th May, 1835.

2. In such cases, it will be no longer optional with the civil courts, as implied in the several Constructions and the Circular Orders hereby revoked, either to commit the accused for trial before a special sessions, or to direct a prosecution for forgery, or to declare the party aggrieved by such forgery at liberty to institute a prosecution in the criminal court, as to them may seem fitting; but it will be incumbent on those courts, in all cases of forgery brought to light in the course of judicial proceedings, to conform strictly to the rules prescribed for adoption in cases of perjury by Section 2, Regulation III. of 1801, Section 3, Regulation VII. of 1813, Section 14, Regulation IV. of 1793, (corresponding with Section 8, Regulation III. of 1803) and Section 14, Regulation XVII. of 1817.

3. The same rule is considered to be applicable, *mutatis mutandis*, to cases of forgery, brought to light in the course of judicial proceedings in a criminal court.

4. These instructions are not intended to exclude from the cognizance of the magisterial authorities, criminal prosecutions for forgery, which may be instituted irrespectively of proceedings in any civil or criminal court.

TO THE CRIMINAL AUTHORITIES.

The 29th April, 1846. *Criminal Statements.*

THE Court are pleased to prescribe the following additions to the rules for the preparation of criminal statements.

Supplementary Rules for the preparation of the Magistrates' Statements.

Para. 137. That the Court may be enabled to ascertain to whom delay in the examination and discharge of witnesses may be attributable, the magistrates will be pleased to make the following addition to statement No. 2, part 3, exhibiting the number of witnesses examined by each magisterial agent, and the periods during which they were detained in attendance by each. The responsibility of delay, and the duty of explaining its cause, will rest on the officer, whether magistrate, assistant or other, before whom it may occur.

The subjoined form can be appended without difficulty to part 3, statement No. 2, by simply prolonging the columns and filling up the first column in the manner shewn in the exemplar:

By Mr. —— *Magte.*																
" "																
" "																
" "																
" "																
" "																

TO THE CRIMINAL AUTHORITIES.

The 1st May, 1846. *Erratum in versions of the Regulations.*

THE Court circulate the subjoined amendment of an error in the Persian and Bengalee versions of Clause 1, Section 24, Regulation XX. 1817.

قانون بیستم سنه ۱۸۱۷ عیسوي
دفعه بیست و چهارم ضمن اول

صحیح	غلط
یکقطعه سمن مثبته بدستخط خود و مهر تهانه معرفت برقنداز یا مختار کار معروف مدعي علیه بر مدعي علیه جاري نمایند الخ	یکقطعه سمن مثبته بدستخط خود و مهر تهانه معرفت برقنداز یا مختار کار معروف مدعي بر مدعي علیه جاري نمایند الخ

ইঙ্গরেজী ১৮১৭ সালের ২০ বিংস আইন।
২৪ ধারা ১ প্রথম প্রকরণ।

অসুদ্ধ	
আপন দস্তখত ও থানার মহর যুক্তে এক সমন বরকন্দাজের মারফতে কিম্বা ফৈরিয়াদির পরিচিত মোক্তারকার হাজির থাকীলেও কোন ওজর না করিয়া সমন লইলে তাহার মারফতে আসামির উপরে পাঠায় ইত্যাদি।	আপন দস্তখত ও থানার মহর যুক্তে এক সমন বরকন্দাজের মারফতে কিম্বা আসামির পরিচিত মোক্তারকার হাজির থাকীলেও কোন ওজর না করিয়া সমন লইলে তাহার মারফতে আসামির উপরে পাঠায় ইত্যাদি।

ADVERTISEMENT.

THE publication of the Decisions of the Sudder Dewanny Adawlut, recorded in English, in conformity to Act XII. of 1843, has been directed by the orders of the Right Honorable the Governor of Bengal, under date the 8th January 1845, No. 64.

The Selected Cases now annually published, to serve as precedents and guides to the lower courts in matters of law and practice, will still continue to be published. The object of the present issue is simply to give all possible publicity to the Decisions of the Sudder Court.

TABLE OF CASES.

Regular Cases.

APPLICATIONS FOR SPECIAL APPEAL.

THE 4TH MAY 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 181 OF 1845.

Regular Appeal from a decision passed by the Additional Principal Sudder Ameen of Patna, Mohummud Rafik Khan, December 26th, 1844.

MOOST. IMAMBANDEE, APPELLANT, (PLAINTIFF,)

versus

HURGOVIND GHOSE, RESPONDENT, (DEFENDANT.)

Wukeel of Appellant—Ameer Ali.

Wukeel of Respondent—Hamid Rusool.

THIS suit was instituted by appellant, on the 3d April 1844, to recover from respondent the sum of Company's rupees 2,867-2-9, principal and interest, on account of crops wrongfully appropriated from the year 1247 to 1250 Fuslee; the said amount being the balance of a total sum of Company's rupees 7,463-12, after a deduction of Company's rupees 4310-14-5, due to respondent by appellant, under a decree of court passed in 1824. The crops whose value is claimed, stated to be the produce of lands belonging to talook Subulpore, in pergunnah Huweelee Patna.

The claim of appellant was opposed by a third party, viz. Moost. Burkutonissa; who asserted her own right to the lands, the produce of which is contested. This person is the great-grandmother of appellant's deceased husband: the grounds of her pretensions will appear presently.

The lands are alluvial, newly formed on a chur, or sand bank, in the Ganges, between Hajipore and Patna; and are claimed by appellant as belonging to her estate of Subulpore, in virtue, amongst other evidences, of a settlement made with her by the authorities in 1843; in which year and the three previous years, respondent maintained forcible possession, and appropriated every thing to himself.

The additional principal sudder ameen decided, that there was nothing whatever to establish the claim preferred, beyond the parole evidence of certain witnesses, which again was contradictory, and altogether insufficient to found a decree upon in favor of appellant.

I quite concur in this. The settlement proceeding, just alluded to, of 1843, shews the arrangement it details, to have been made not with appellant but with Moost. Burkutonissa, who, as above stated, protests against appellant's pretended right being recognised; and, further, to have been made with Moost. Burkutonissa, as then

in possession of the lands assessed; in the face of which record, respondent is sued for the usufruct of that year, as holding a forced occupancy.

The witnesses of appellant are mostly petty ryuts on her estate; and, so far as any thing can be gleaned from their depositions, it would appear, that the cultivated portion of the land was in their hands, in patches of different extent; that they ploughed and sowed; but were not allowed to reap; for respondent watched his time, and when the harvest was ready, cut it and carried it off. Two of these witnesses shew the nature of the crops:—"The whole lands comprehended about 2,000 beegahs, of which 1,200 were *jhao-jungle*, and 800 *sand*." The *possession* of respondent is not deposed to by any of them; and is indirectly disproved by the assertion of their own.

The case has apparently been got up by appellant, to defeat or throw obstacles in the way of respondent's measures consequent on his decree of 1824; in satisfaction of which appellant's estate had become liable to sale. Be this as it may, the dismissal of the claim was clearly just and proper; and as such, I affirm the decision. All costs will be paid by appellant.

THE 7TH MAY 1846.

PRESENT:

R. H. RATTRAY and
C. TUCKER,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 202 OF 1844.

Special Appeal from a decision passed by the Additional Judge of Behar, Wm. St. Quintin, November 6th 1843; affirming a decision passed by the Moonsiff of Behar, Mohummud Ali Ushruf, June 30th, 1843.

UMJUD ALI, APPELLANT, (PLAINTIFF,)

versus

SHAM LAL, MOHUMMUD BAKUR, AND MOOST. SADUTONISSA, RESPONDENTS, (DEFENDANTS.)

Wukeel of Appellant—Hamid Rusool.
Wukeels of Respondents—Aftabodeen and Asmutoollah.

THIS suit was instituted by appellant, January 19th 1843, to recover from respondents a 1 anna 6 dam share of mouzah Milawan; the estimated value being Company's rupees 213-5-4.

The plaint sets forth, that, on the 16th Phalgoon 1248 F., plaintiff (appellant) purchased a $3\frac{1}{2}$ annas share of the village of Milawan from Akbur Sheer, Moost. Hoseinee, and others; Mohummud Bakur and Saduto Nissa being at the time proprietors of a 1 anna 6 dam share: which share plaintiff had already taken on a lease of twelve years, from 1245 F. to 1257 F., on an advance of 165 rupees; the annual rent being fixed at 25 rupees. After this, on the 5th Aghun 1250 F. Mohummud Bakur and Saduto Nissa, without any intimation to appellant, sold their share to Sham Lal for Sicca rupees 200 (Company's rupees 213-5-4;) refusing the same sum from plaintiff, who claimed the right of pre-emption, under the law, in virtue of the portion of the estate already possessed and held by him.

Of the defendants (respondents) Sham Lal alone made answer to the plaint; and it is only necessary to state that he denied its correctness: asserting the purchase to have cost him 400 rupees; no farm-lease to have been granted to plaintiff, and no advance to have been received from him; but that he (plaintiff) is a recent purchaser of the portion he possesses, and not an hereditary proprietor, and has no right to the preference he claims in regard to the purchase; and, finally, that the lands have been resumed by Government, and a settlement made for them with him, Sham Lal.

Upon the ground of this resumption of the lands by Government, and the settlement entered into for them with the purchaser, Sham Lal, the moonsiff dismissed the claim to the right of pre-emption, on the part of appellant.

In appeal, the additional judge also dismissed the claim, on the ground of appellant having been a purchaser within the recent period of three years, of the portion of the estate held by him, under which fact he had not the right of preference which he sought to establish.

The additional judge's interpretation of the law on this subject, is manifestly erroneous, as is that of the moonsiff; and without entering further into the case on other points, the Court cancel their decisions, and direct that the proceedings be returned, that the case may be disposed of on its merits.

The usual order will issue in regard to stamps, costs, &c.

THE 9TH MAY 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE NO. 180 OF 1845.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Patna, Ephraim DaCosta, March 19th, 1845.

MEGHUN SINGH AND OTHERS, APPELLANTS, (PLAINTIFFS,)

versus

GOVERNMENT, THE COLLECTOR OF THE DISTRICT, MUHEISHA SINGH, AND OTHERS, RESPONDENTS, (DEFENDANTS.)

Wukeels of Appellants—Hamid Rusool and Gholam Ahmud Khan.
Wukeel of Government—Pursun Komar Thakur Raee Bahadur.

THIS suit was instituted by appellants, on the 5th October 1841, to obtain the reversal of the sale of mouzah Rampore Doomra, and possession of a 3 anna 4 dam share of the estate. Estimated amount, Company's rupees 21,650-8-6-2.

The principal sudder ameen concludes a long proceeding, explanatory of the grounds generally upon which he dismissed the suit, as follows:

'Furthermore, no petition contesting the sale was ever presented by the plaintiffs (appellants) to the commissioner of revenue, as directed in Clause 2, Section 24, of the said Regulation (XI. 1822.) The court cannot therefore, according to the letter of the law, take up and decide upon any plea not previously urged by the plaintiff to the commissioner. Even the petition, which others than the plaintiffs presented to that authority, on the 4th January 1840, against the sale, was not filed within the period of 30 days from the date of sale, limited in Clause 2, Section 24, Regulation XI. 1822. The suit must therefore be dismissed under Section 26, of the same Regulation.'

Now, with these facts established, the entering upon the merits of the case was altogether supererogatory; and had the principal sudder ameen arrived at a different conclusion from that recorded by him, he was impotent to afford redress: inasmuch, as the plaintiffs had negatived their original right to seek that redress, through their neglect of those preliminaries which the law requires as a condition to its being afforded.

In appeal, it was pleaded, that the prescribed application had been made to the revenue authorities; and a petition was pointed out as corroborating the assertion. This is the petition alluded to

by the principal sudder ameen, as having been presented on the 4th January 1840. Now the sale petitioned against, took place on the 3d December 1839, and the law is explicit, 'within 30 days,' after which the presentation is of no avail. Besides, the petition was subscribed and presented by 'Bhojoo, the son of Omun *Malik*;' but Bhojoo was not himself a party, and had no power of attorney to act for others; and Section 25 of the Regulation cited, disallows all such pleas except from parties to the suit before the court.

For the reasons thus set forth, I affirm the decision of the lower court, with costs payable by appellants.

THE 12TH MAY 1846.

PRESENT:

C. TUCKER,

JUDGE.

PETITION NO. 17 OF 1845.

IN the matter of the petition of Ali Khan, filed in this Court on the 6th January 1845, praying for the admission of a special appeal from the decision of Mr. Arthur Smelt, judge of Patna, under date the 1st October 1844, affirming that of Mr. Da Costa, principal sudder ameen of said zillah, under date 6th April 1844, in the case of Sheo Pertab Sing and others, plaintiffs, *versus* Ali Khan and others, defendants.

It is hereby certified that the said application is granted on the following grounds.

The plaintiffs sued to recover 300 beegahs of land, situated, according to *their* assertion, in mouzah Behtna, pergunnah Amertoo, under these circumstances. When the revenue surveyor, Lieut. Ellis, was measuring and surveying the pergunnah, preparatory to its assessment, the lands in question were measured as part of mouzah Beloo, the property of the defendants. The plaintiffs preferred their objections to Lieut. Ellis, who, on 22d September 1838, rejected them, deciding in favor of mouzah Beloo.

On this the plaintiffs, alleging themselves to have been dispossessed by this measurement of the lands as appertaining to mouzah Beloo, instituted the present suit to try the right to the property in dispute. They pleaded that the lands had, by private arbitration, on 2d Aughun 1239 Fuslee, 21st November 1831 A. D., been awarded to them.

Notwithstanding that this award was between other parties, the defendants not having been a party to it,—and that it was moreover not produced before Lieut. Ellis, the principal sudder ameen refused to enter into any enquiry or investigation as between

the parties before him, and decreed for the plaintiffs on the arbitration award—and his decision was affirmed by the judge.

As an arbitration award binds only those who are parties to it, the decision of the lower courts is contrary to usage in such cases; and I therefore admit the special appeal,—annul the decision of both courts,—and, under the provisions of Clause 2, Section 2, Regulation IX. 1831, remand the proceedings for trial on the merits as between the parties before the court.

THE 13TH MAY 1846.

PRESENT:

A. DICK,

JUDGE.

CASE No. 230 OF 1843.

Special Appeal from the decision of the Principal Sudder Ameen of Zillah East Burdwan, Seiud Jenaub Alee Khan.

KANJON ELLIAS, APPELLANT, (DEFENDANT,)

versus

CHUNDER SEEKUR CHOWDREE, RESPONDENT, (PLAINTIFF.)

Pleaders—Sheeoonarain Chutoorjeeah for Appellant, and Ram Pran Raee and Bunsee Budun for Respondent.

SUIT laid at Company's rupees 55, 3 annas, 13 gundas, rent of 8 beegahs, 18 cottahs, 14 chittacks.

The plaintiff, respondent's statement is that the defendant, appellant, purchased at a sale which he himself had caused in satisfaction of a decree, 35 beegahs, 15 cottahs, and ½, at a jumma of 51 rupees 6 annas, as the jote of one Beycha Ram, the jotes of 3 persons; but which he affirms to be at a jumma of 27 rupees only, and when he got possession, he managed to be put into possession of a 4th jote, for which one Drib Mayee sued and got a final decree. The appellant asserts that he purchased as the jote of Beycha Ram 35 beegahs, 5 cottahs, at a jumma, or rent, of 27 rupees, and that he has no more in possession.

The moonsiff decreed the plaintiff's claim, and his decision was affirmed in appeal by the principal sudder ameen.

A special appeal was admitted by Messrs. Reid and Tucker, to try whether the decisions in this case and the three following, were not at variance, as they seemed, with a former decision for part of the same land; and whether the appellant was liable to payment for more land than may be proved to be in his possession.

JUDGMENT.

This and the two following cases have no connection with the case in which the decision above alluded to was given. That was Drib Mayee's case.

There is nothing on record to shew the exact extent of the land in appellant's possession, and whose jotes they comprise. Therefore the case is remanded. The principal sudder ameen will call upon the plaintiff to specify the boundaries of each of the several jotes the land of which defendant occupies, and give proof of their respective jummas. He will then depute the pergunnah ameen to repair to the spot, and require the plaintiff to point out the several jotes, which he will measure. The principal sudder ameen will then decide, awarding against defendant whatever land may be found in his occupation, at the rent proved.

THE 13TH MAY 1846.

PRESENT:

A. DICK,

JUDGE.

CASE No. 231 OF 1843.

Special Appeal from the decision of the Principal Sudder Ameen of Zillah East Burdwan, Seiud Jenaub Alee Khan.

SUIT laid at 37 rupees 11 annas 10 gundas, for rent.

CASE No. 232 OF 1843.

Special Appeal from the decision of the Principal Sudder Ameen of Zillah East Burdwan, Seiud Jenaub Alee Khan.

SUIT laid at 37 rupees 11 annas 10 gundas, for rent.

CASE No. 233 OF 1843.

Special Appeal from the decision of the Principal Sudder Ameen of Zillah East Burdwan, Seiud Jenaub Alee Khan.

SUIT laid at 37 rupees 11 annas 10 gundas.

This suit is for rent on the jote of Drib Mayee's husband, for which Drib Mayee sued appellant and got a final decree. The principal sudder ameen will, however, carefully ascertain its boundaries, from enquiry, through the pergunnah ameen, on the spot, and

whether appellant really obtained possession of it, when he purchased the jote of Beycha Ram; and also when Drib Mayee was again put into possession in virtue of her decree, and decide accordingly.

THE 13TH MAY 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 189 OF 1845.

Regular Appeal from a decree passed by the Additional Principal Sudder Ameen of Patna, Mohummud Rafik Khan, December 7th, 1844.

LALOO SAHOO, APPELLANT, (DEFENDANT, WITH OTHERS,)

versus

THE SUB-DEPUTY OPIUM AGENT OF PATNA, ACTING ON THE PART OF GOVERNMENT, RESPONDENT, (PLAINTIFF.)

Wukeel of Appellant—Abbas Ali.

Wukeel of Respondent—Pursun Komar Thakur Raee Buhadur.

THIS suit was instituted on the 10th January 1844, to recover from appellants and others, the sum of Company's rupees 6,644-9-7-5, principal and interest, amount of deficiency as per account rendered by him, as a treasurer of the agency, for the months of September and October 1836; the interest calculated to the 15th January 1844.

The account rendered for October 1836, was, in abstract, as follows:

Balance of preceding month, ...	3658	10	0	18
Receipts in October, ...	3510	4	4	17
Total in hand,...	7168	14	5	15
Disbursed in October, ...	3315	14	0	1
Balance in hand, 1st November,.........	3853	0	5	14

The balance thus acknowledged by appellant, was not subsequently denied; but he protested against being made responsible for the sum of rupees 3,560-10-1; which, he asserted, had either been paid by himself under instructions from different functionaries on the establishment, or was due, in specified proportions, by other treasurers, viz., Sree Chund and Neem Chund, both defendants in the case. There were other defendants also,—those by whose in-

structions he had disbursed, as just noted, a sum amounting in the whole to rupees 1,571-1-4; and the sureties of all these persons, including appellant's, respectively.

There was not evidence to throw a responsibility for any part of the deficit upon Sree Chund or Neem Chund; nor any to shew the asserted payments by appellant under instructions from other functionaries of the agency; and accordingly the additional principal sudder ameen passed a decree for the amount claimed, against appellant and Jeetoo Khan, his surety—a defendant, but who has not appealed: these two to pay their own, and the costs of the other defendants, against whom nothing had been established.

Against this award, an appeal was preferred to this court; but nothing new was pleaded by appellant, except on the point of the costs of the defendants, other than himself, for payment of which (with Jeetoo Khan) he (appellant) had been declared liable. This was deemed by him to be unprecedented, unjust, and illegal.

Now, in the preliminary enquiry which took place on the first discovery of the deficit, and again in the course of the judicial proceedings held on the occasion, of the attachment of appellant's property by respondent, the defendants whose costs have been exacted from appellant, were, one and all, implicated by him, to an extent, which, had his statement been verified by the evidence in this case, would have altogether exonerated him, and rendered them responsible for what he has been adjudged to pay. The circumstance of their having been parties to the suit, was therefore solely and entirely attributable to himself; and as there is nothing either unjust or illegal in the order passed in regard to them, I affirm the decree as it stands; with all costs chargeable to appellant.

THE 14TH MAY, 1846.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 211 OF 1844.

Special Appeal from Principal Sudder Ameen of the 24-Pergunnahs.

MUNOHUR MUNDLE, BALIK RAM MUNDLE, BABOO RAM LUSHKUR, GUNGARAM KAORA, (PLAINTIFFS,) APPELLANTS,

versus

RAM TONOO DUTT, (DEFENDANT,) RESPONDENT, AND RAM DHUN SEIN, GOMASHTEH, ABSENT IN APPEAL.

A SPECIAL appeal application was admitted by Mr. Reid, on the 25th May 1844, on the grounds of a certificate bearing that date.

The appellants sued, on the 3rd April 1842, to recover 141 rupees, the value of certain property illegally sold by the respondent, defendant, under Regulation V. 1812, on the 5th August 1841.

The moonsiff of Bishenpore decreed in favor of the appellants. The principal sudder ameen reversed the decision, on the ground that no suit had been instituted to set aside the summary decision passed under the provisions of that law.

BY THE COURT.

The decision of the principal sudder ameen is erroneous. No summary decree was passed under Regulation V. of 1812. The plaintiffs not having furnished security, as is required by law, their property was sold, and they, disputing the justice of the demand, instituted this suit to recover damages, which, the Court observe, is strictly conformable to the provisions of section 17, Regulation V. of 1812. The respondent, though duly summoned, not having appeared, the appeal is decreed with costs and interest upon the aggregate amount awarded by the moonsiff from the date of his decree to date of realization.

The Court cannot but express their surprise that the principal sudder ameen, Hurree Narain Ghose, should, in the face of so positive an enactment, as that above cited, have passed a decision so opposed to law.

THE 16TH MAY 1846.

PRESENT:

C. TUCKER and
J. F. M. REID,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

PETITION No. 754 OF 1844.

IN the matter of the petition of Rajah Kishen Kishore Manick, filed in this Court on the 21st September 1844, praying for the admission of a special appeal from the decision of the judge of zillah Tipperah, under date the 21st June 1844, affirming that of the principal sudder ameen, under date 2d April 1844, in the case of petitioner, plaintiff, *versus* Juggernath Sein and others, defendants.

It is hereby certified that the said application is granted on the following grounds.

The plaintiff, in a former case, sued the defendants for possession of certain lands, alleging they held them under an invalid lakhiraj tenure;—that they were given to the defendants for the period of their service, and that they were no longer servants of the Raj of Tipperah.

The defendants urged they held on a perpetual lease of 5 rupees,—not on the terms stated by the plaintiff; that they had so held them for 29 years, and that the Rajah himself had, for 10 years after his accession to the Raj, made no objections, and that Section 14, Regulation III. 1793, barred the action.

The principal sudder ameen of Tipperah, Mahomed Allie Abool Kheir, on the 30th November 1842, dismissed the plaint, and his order was, on the 18th April 1843, affirmed by the judge, Mr. Skipwith.

The present action was then filed, on the 8th December 1843, to recover possession of the same lands—7 dhoons, 1 kun, 10 gundas, 2 cowries, situate in chuklah Roushunabad in pergunnah Miherkool; to reverse a talookdaree pottah held by the defendants, Juggernath Sein and others; and to obtain mesne profits for 3 years and 2 months, for the years 1250 to 1253 Tipperah.

The answer of the defendants is to the same purport as that filed by them in the former suit.

The principal sudder ameen and the judge again dismissed the plaint; but, on this occasion, on the grounds that the cause of action having already been disposed of, the same issue between the same parties could not again be tried under the provisions of Section 16, Regulation III. of 1793.

Application was then made by the Rajah for admission of special appeal, setting forth the inapplicability of the Regulation III. of 1793;—and, further, that, under precedents of the Sudder Dewanny Adawlut, the claim on which the defendants urge their right, is inadmissible.

BY THE COURT.

The ground of action in the former suit was possession of certain land held under an invalid lakhiraj tenure. The present suit is founded on claim to reverse a mookurrurree pottah, and to obtain possession of the same land to which defendant—being no longer a servant of the Raj—had no title of occupation. The Court held the cause of action in the two suits to be distinct and separate claims—and, consequently, that the 16th Section of Regulation III. of 1793, does not bar this action. They direct the appeal be admitted, and the case brought on the Court's file, and returned for re-investigation, on its merits, by the principal sudder ameen.

THE 18TH MAY 1846.

PRESENT:

R. H. RATTRAY and
C. TUCKER,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 273 OF 1844.

Regular Appeal from a decree passed by the Judge of Tirhoot, David Pringle, July 19th, 1844.

DERIAO SINGH, BUHOORUN SINGH, SHEO SINGH, RAM NARAIN *alias* KHEDOO SINGH, APPELLANTS, (DEFENDANTS, WITH BURMHA DUTT AND SEVENTEEN OTHERS, WHO DO NOT APPEAL,)

versus

KHURRUG KOWUR (MUSST.) MOTHER AND GUARDIAN OF LAL BEHAREE SINGH AND KOONJ BEHAREE SINGH, HER MINOR SONS, BY ADHOORUN SINGH, HER HUSBAND, DECEASED, SUMBHOO DUTT, SHEOLAL SINGH, RESPONDENTS, (PLAINTIFFS.)

Wukeel of Appellants—Charles Glass.
Wukeel of Respondents—Edward Colebrooke.

THIS suit was instituted by respondents, on the 22nd February 1841, to be maintained in possession of a 1 ana's share of mouzahs

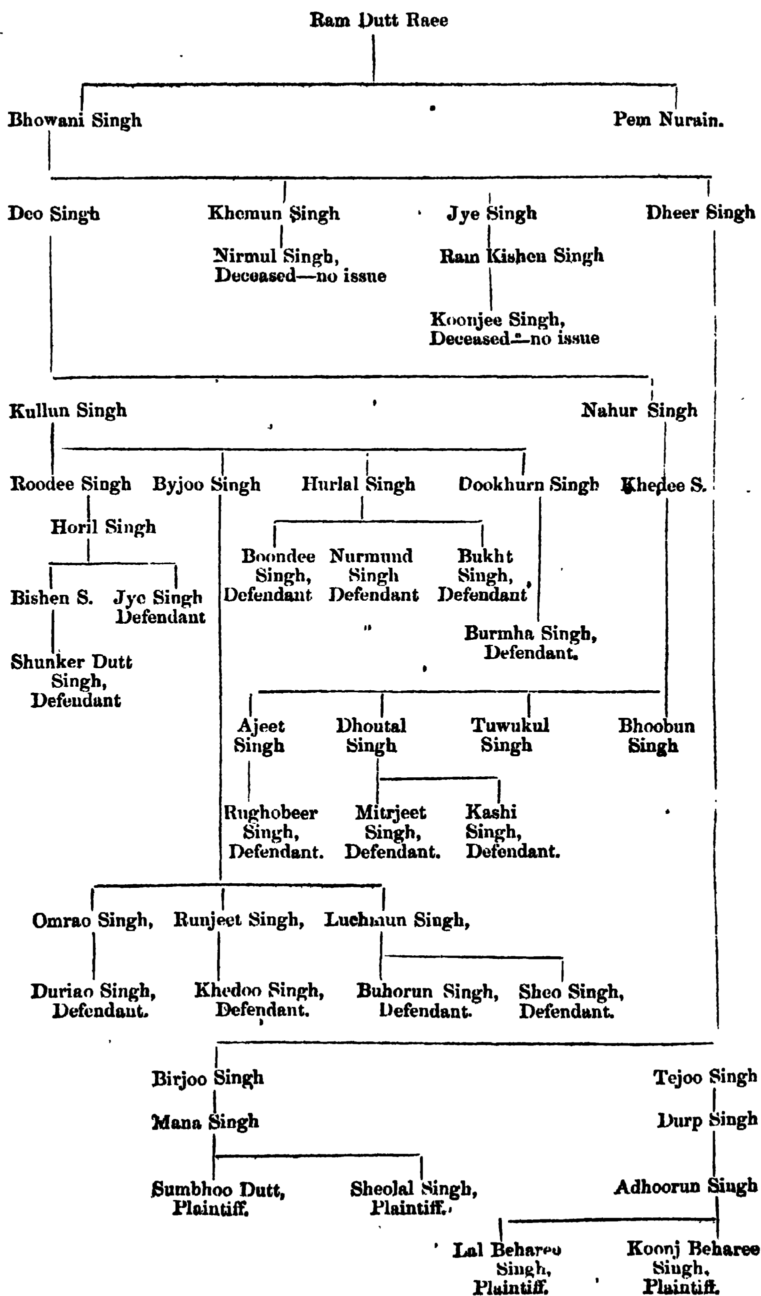
Bhubotpore and Kapun, situated in pergunnah Surissa; estimated at 3 jummas, at rupees 400-2. A supplementary plaint of the 3rd September (1841) explained the claim to be, to *obtain* possession of the share specified.

The decree appealed against is as follows. 'The plaint sets forth, that this action is brought under direction of the principal sudder ameen in his judgment of the 8th August 1839; and, after detail of genealogy, as given in tree now annexed, goes on to state, that, Koonjee Singh, great grandson of Bhowani Singh, who, with Pemnarain, was co-heir of Ram Dutt Raee, the common ancestor, having died without issue, his share devolved on Adhoorun Singh, father of the plaintiffs, minors, in right of his adoption by the deceased, who accordingly sued Omrao and others, descendants of Deo Singh, for this, along with a sixteenth, his share, in the ancestrel property: dismissed by the register on the 27th December 1806, at once, because of the twofold cause of action, and such adoption of an eldest son being invalid; and the parties directed to divide the share of Koonjee Singh according to respective interests as heirs at law: affirmed in appeal on the 30th November 1812; when Omrao Singh, and on his death Deriao Singh, with the other defendants, having agreed to a partition, Adhoorun Singh's interest was admitted to be a sixteenth. Subsequently, on suit of Adhoorun *versus* Omrao and others, a decree was obtained on the 14th February 1814, for half an ana in eight anas in mouzah Bhubotpore Uslee, on terms of said adjustment, and one ana in entire mouzah Kabin (Kapun?) dukhlee, from which no appeal was preferred; and on 14th March 1818, another decree in favor of the same party, confirmed in appeal on the 15th April 1829, for half an ana, as heir at law, in lapsed share of Koonjee Singh; plaintiff's right being then likewise admitted at a sixteenth. From which time enjoying one sixteenth as share of the ancestrel property, and a half of that coming through Koonjee Singh, Adhoorun, with Sumbhoo Dutt and Sheolal, granted a lease of their united shares, that is of three anas, to the servant of the Dowlutpore Factory, who likewise held in farm eight anas of Kukree Singh and others, the heirs of Pem Nurain Singh, and 2½ anas of Boopun (Bhoobun?) Singh, great grandson of Deo Singh; when defendants refusing to pay rent for their cultivation, they were sued by the factory with the plaintiffs, in whose favor a judgment was given, with reservation as to one ana in the three anas held of Adhoorun Singh and others, the title in which being disputed, and the plaintiffs directed thus to establish it.

The defendants reply, that only half a sixteenth of the ancestral property descended to the plaintiffs; whose ancestors, Birjoo Singh and Tejoo Singh, had conveyed the remaining half to Bechoo Singh, their ancestor, previous to the settlement. They further plead, that the suit is barred by the law of limitation. As regards the former objection, it is sustained by no proof whatever; and in the suit

decided 30th November 1812, before referred to, a sixteenth is admitted to be inherited by the plaintiff; and in the evidence of Mana Singh, cited as a witness by the defendant in that suit, the same is stated: while the two judgments, subsequently given in favor of the late husband of the plaintiff, on the 14th February 1814 and 14th March 1818, establish his succession at a period long subsequent to the alleged transfer, to one sixteenth in mouzah Bhubotpore and Kabin (Kapun?) respectively. As regards the second objection, the plaintiffs' possession to a late date is established. We find four decrees given by the sudder ameen for rent, in favor of the plaintiffs lessee in 1832, who again sued for the same in 1836; besides which, on an appeal in a Regulation XV. 1824 suit, to the judge of circuit, we find that authority awarding it in favor of Adhoorun. Further, when entry of names of plaintiffs (was) opposed before collector in 1823, it was overruled by that officer. The only possession held by the defendants, was as cultivators; and no dependence is to be placed on the ameen's report as to the same, seeing the enquiry was made in absence of the plaintiffs, and objections from the first lodged against it. Lastly, the suit of the defendants against the factory for balance of rent, was dismissed by the sudder ameen; and, considered in appeal with this case, has now been finally dismissed, from the failure of the plaintiffs there to establish their possession. Suit decreed, with costs; and due return of mesne proceeds to be rendered.'

The following is the 'tree' or genealogical table, mentioned at the commencement of the decree of the zillah judge; and exhibits the relative position of the parties to the suit :


Ram Dutt Raee
Bhowani Singh
Pem Nurain.
Deo Singh
Khemun Singh
Jye Singh
Dheer Singh
Nirmul Singh, Deceased—no issue
Ram Kishen Singh
Koonjee Singh, Deceased—no issue
Kullun Singh
Nahur Singh
Roodee Singh
Byjoo Singh
Hurlal Singh
Dookhurn Singh
Khedee S.
Horil Singh
Boondee Singh, Defendant
Nurmund Singh Defendant
Bukht Singh, Defendant
Bishen S.
Jye Singh Defendant
Burmha Singh, Defendant.
Shunker Dutt Singh, Defendant
Ajeet Singh
Dhoutal Singh
Tuwukul Singh
Bhoobun Singh
Rughobeer Singh, Defendant.
Mitrjeet Singh, Defendant.
Kashi Singh, Defendant.
Omrao Singh,
Runjeet Singh,
Luchmun Singh,
Duriao Singh, Defendant.
Khedoo Singh, Defendant.
Buhorun Singh, Defendant.
Sheo Singh, Defendant.
Birjoo Singh
Tejoo Singh
Mana Singh
Durp Singh
Sumbhoo Dutt, Plaintiff.
Sheolal Singh, Plaintiff.
Adhoorun Singh
Lal Beharee Singh, Plaintiff.
Koonj Beharee Singh, Plaintiff.

The respondents in this case originally claimed a three sixteenth share of the estate named: viz. two sixteenths inherited from their common ancestor Dheer Singh, the fourth son of Bhowani Singh, and one sixteenth their portion of the lapsed share of Koonjee Singh. Of these three anas, appellants admit respondents to be in possession of the two anas inherited from Dheer Singh, but deny that they ever had possession of more than these two anas.

In the Court's opinion, the documentary and oral evidence adduced by respondents does not sustain their claim. It is true that Adhoorun Singh obtained a decree on the 14th March 1818, for a half ana portion of the lapsed share of Koonjee Singh; but it has not been established that execution was ever taken out, nor does it otherwise appear that the respondents ever had possession of any portion of the lapsed share of Koonjee Singh; and as Koonjee Singh died in 1210 Fuslee, any claim of right is now barred by the statute of limitation.

With reference to these facts and circumstances, the Court reverse the decree of the zillah court; with all costs chargeable to respondents.

THE 19TH MAY 1846.

PRESENT:

A. DICK,
JUDGE.

CASE No. 121 OF 1843.

Regular Appeal from the decision of the Principal Sudder Ameen, Raee Ram Lochun Ghose, of Zillah Nuddeah.

GOVIND MUNEE DASEE, GOLUK MUNEE DASEE, AND KALEE MUNEE DASEE, (PLAINTIFFS,) APPELLANTS,

versus

COLLECTOR OF ZILLAH; ROGONATH RAEE, AUCTION PURCHASER, DAMOODHUR CHUNDER RAEE AND OTHERS, HIS HEIRS, (DEFENDANTS,) RESPONDENTS.

Pleaders—Sree Ram Raee, Bunsee Budun, and Gholam Sufdur, for Appellants, and Pursun Koomar and Mr. Waller for Respondents.

SUIT laid at Company's rupees 85,375 and 7 annas, to cancel sale of plaintiffs' share in pergunnah Kularowa Hooseinpoor.

The plaintiffs founded their claim to have cancelled the sale of their estate by the collector for arrears of revenue, on divers reasons, which were all denied by the collector, or justified; and the suit was dismissed by the principal sudder ameen, who declared the sale valid.

The only two pleas advanced by appellant in this Court, worth consideration, were—1st, That the collector had put up and sold the estate for arrears due by them and another sharer, before the property was brought under butwara, and for which his share ought to have been sold along with theirs; and 2d, That the estate was first knocked down for 60,000 rupees; but the bidder not being able to put down the earnest money, it was immediately put up again, and knocked down to respondent, Rogonath Raee, for 40,000 rupees, who too could not put down the earnest money; but to him the collector gave time, and he paid it the next day. By this inconsistent conduct of the official, the appellant's estate was sold for 20,000 rupees less than was first offered.

The first plea appellants have been unable to establish; whereas the respondents have shewn that the whole of the principal of the arrear, was due by the appellants alone. From a report of the collectorate record keeper, it appears that the other sharer had paid up all due by him, in consequence of which, the estate being under butwara, his share was excluded from sale.

The second plea, the appellants had urged before the revenue commissioner, who rejected it. The law, Regulation XI. 1822, leaves discretionary power with the collector. The Circular Orders of the Sudder Board of Revenue have restricted that power. Cognizance therefore of that point belongs not to the courts.

The appellants having failed to establish valid ground for annulment of the sale, their appeal is dismissed with full costs, and principal sudder ameen's decision is affirmed.

THE 19TH MAY, 1846.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 131 OF 1844.

Special Appeal from the Judge of Purnea.

TALWUR CHOWDREE, HEIR OF BIKRAM CHOWDREE, (PLAINTIFF,) APPELLANT,

versus

RAMPERSAUD AND OTHERS, BROTHERS OF RAM DHUNNEE CHOWDREE, AND GUARDIANS OF HIS MINOR SONS, (DEFENDANTS,) RESPONDENTS.

A SPECIAL appeal was admitted by Messrs. Tucker and Reid, on the 13th April 1844, to try whether a farmer is empowered to enhance rents.

The plaintiff states: the farmers of pergunnah Dhurmpore gave to Bikram Chowdree, in the name of Hanoman my younger brother, an under farm of the village Kunglee from 1245 to 1251 Fuslee—I am heir to Bikram Chowdree's estate, and in possession of it. The defendants, who are brothers, live together and are sharers. I frequently required them, as did my ancestor in 1245 and 1246, to come in under notice duly served to give in their kaboleut. Though they have been in possession of the lands, the rents of which are now claimed, since 1245, they have not entered into any engagements for the lands they cultivate. In 1245, I measured them, and they turned out to be 97 beegahs 4 cottahs, the jumma of which rateably is 2 rupees 10 annas per beegah, and amounts to 255 Sicca rupees 2 annas 1½ pie per annum, and for the four years included in the plaint, Sicca rupees 1020-9½ annas. After deducting 160 rupees paid, there remains Sicca rupees 860-8 annas 3½ principal, rent due, as per the putwaree's papers. I sue for this sum, and 256 Sicca rupees 8 annas interest, being 1117 Sicca rupees 0 anna 3½ pie, or Company's rupees 1191-8 annas 4 pie up to the present date, and costs; also for interest to date of realisation.

ANSWER OF THE DEFENDANTS.

Our father and ourselves have held the above village at a jumma of 43 rupees 1 anna 12½ gundas, and paid former farmers at the rates specified in our answer. We had a mokurruree right; no farmer increased our rents; nor did the amlah of the zemindar; how can the plaintiff do this? Moreover the plaintiff's father took the same rent from us, and gave us receipts. On the 30th Bysack 1244, plaintiff's father gave us a purwaneh in lieu of a pottah, with rates set forth in it, in the names of Ram Dhunnee and Rampersaud, confirming the former rates. We have also a document signed by plaintiff's ancestor; and hold nothing beyond what we have all along held, and have settled our annual accounts with plaintiff's ancestor under the rates he confirmed.

The principal sudder ameen, on the 28th December 1842, recorded judgment as follows:—The plaintiff proves issue of notice on the defendants; but the point of the case is this—Is the purwaneh of Bikram Chowdree, put in by the defendants, valid or not? Five witnesses, one of whom is a relative of plaintiff and another a putwaree named by both parties, prove the purwaneh of Bysack 1244, and shew that Bikram, the farmer, took the rents for the entire year at the former rates, and gave receipts for the same, confirming the former rates to run from 1245 to 1251. Bikram survived 2 or 3 years after the purwaneh; his not claiming to enhance the rents establishes the integrity of the purwaneh. It is not credible that defendants should apply for a fresh pottah having the said purwaneh in their hands. Rents from 1245 to 1248, at 43 rupees 1 anna 12½ gundas, amount to 172 rupees 6½ annas; after deducting 160 rupees

12½ annas paid, there remains 12 rupees 5 annas 17½ gundas principal, and 12 annas batta, which with 1 rupee interest, amount to 14 rupees 1 anna 17½ gundas: this sum and costs, with interest to date of realisation, are decreed to the plaintiff.

An appeal was preferred to the judge, whose opinion is recorded in his proceedings of the 4th May 1843. The judgment is not drawn out clearly; but the order directs that the sum of 14 rupees 1 anna 17½ gundas be decreed to the appellant, plaintiff. The principal sudder ameen's decision is reversed so far as it upholds the mokurruree right claimed by the defendants. The judge however does not bar a suit hereafter against the defendants, should the plaintiff duly serve notice on them, under the provisions of Regulation V. 1812, and in accordance with Constraction 234 of the 28th July 1815.

BY THE COURT.

The appellant (plaintiff) is only entitled to recover the amount of rent which the defendants have for former years paid to him. The notice which he issued was not in conformity with Section 9, Regulation V. of 1812. Until that be done by Section 10, of the said law, enhanced rent cannot be recovered. The notice did not, as required, notify the specific rent demanded. The appeal is dismissed with costs. This decision is strictly in accordance with that passed by a full bench on the 29th February 1844, published at page 156, Volume VII., of the Sudder Dewanny Reports.

THE 19TH MAY 1846.

PRESENT:

C. TUCKER,

JUDGE.

PETITION NO. 41 OF 1845.

IN the matter of the petition of Eshur Chunder Muzoomdar, filed in this Court on the 21st February 1845, praying for the admission of a special appeal from the decision of Mr. E. Bentall, judge of zillah Jessore, under date 28th November 1844, reversing that of Mr. Thomas, sudder ameen of said zillah, under date 9th April 1844, in the case of Eshur Chunder Muzoomdar, plaintiff, *versus* Eshur Chunder Moonshee and others, defendants.

It is hereby certified, that the said application is granted on the following grounds:

In this case it appears from the proceedings that one Koodrutollah, a servant of Eshur Chunder Moonshee's, under pretence of the

plaintiff being in balance on account of rent for the year 1244 B. E., attached his property. The plaintiff, giving security, entered a suit under Regulation V. 1812, to contest the alleged balance of rent; but the case was decided against him, and the property ordered to be sold. The plaintiff then immediately instituted a regular suit in the civil court, to reverse the summary decision given against him by the collector, and obtained a decree, which, on appeal, was affirmed. The plaintiff then instituted the present suit, in which he states that the defendants have still possession of the attached property, and that they have made use of the bullocks to cultivate their own lands from the first attachment; and, therefore, he sues for the value of the property attached, and for damages sustained by him in consequence of the illegal attachment.

He obtained a decree from the sudder ameen, which, on appeal to the judge, was reversed by that officer, because the plaintiff ought to have included the claim in the suit he instituted to reverse the summary decision passed against him under Regulation V. 1812; and, not having done so, the suit was inadmissible.

The judge lays down the law on his own dictum entirely. He quotes neither Regulation, nor precedent, nor Construction, in support of it,—and I am not disposed to agree with him. The Construction 467, does not apply to this case, inasmuch as the attached property has not been sold; and the plaint is that notwithstanding the defendant's claim of rent has been rejected by the courts, yet they will not restore to him the property they attached and still hold in their possession, in satisfaction of that claim.

It was quite optional with the plaintiff to have included the present claim in his former suit, or, as he did, to sue first to disprove the claim of rent brought against him;—and as the judge's decision is not founded on any law, or other competent authority, I admit the special appeal, and direct that the case be remanded to the judge, who will re-admit the appeal again on his file on its original number, and dispose of it on its merits.

THE 19TH MAY 1846.

PRESENT:

C. TUCKER,

JUDGE.

PETITION NO. 62 OF 1845.

IN the matter of the petition of George Lamb, Esquire, filed in this Court on the 3rd March 1845, praying for the admission of a

special appeal from the decision of Mr. F. Skipwith, Judge of Tipperah, under date the 3rd December 1844, affirming that of Mahomed Nazim, sudder ameen of said district, under date 13th August 1844, in the case of Noor Jan Begum, plaintiff, *versus* G. Lamb, Esquire, defendant.

It is hereby certified that the said application is granted on the following grounds:

In this case the petitioner held a farm from Noor Jan Begum, from 1245 to 1250 B. S., at an annual jumma of Company's rupees 351,—of which the engagement was, that he was to pay the Government revenue rupees 156-6,—to be allowed for expences and russoom ijaradaree rupees 65-10,—and the balance, or rupees 129, was to be paid to Noor Jan Begum. The present suit was brought by Noor Jan Begum to recover this sum, which she declared had not been paid. The petitioner, defendant, pleaded the condition of his lease, which was, that in the event of the assets, assumed at rupees 351 (and which when the farming lease was granted had not been accurately ascertained), proving to be deficient, the amount of deficiency should be deducted from the sum of rupees 129, payable annually to Noor Jan Begum, and urged, that, in consequence of certain lands having been resumed by Government, and from other causes, the assets were reduced to rupees 245-11, and prayed this might be enquired into. The condition was not disputed; but the fact of the reduction of the assets was.

The only point to be ascertained by the court in this case, was the actual assets of the lands farmed to the defendant during his lease of them. Instead of doing this, accounts of a period prior and subsequent to his farming lease have been admitted, as showing the rate of assets during his lease—and the defence was rejected, and a decree passed for the plaintiff by the sudder ameen, which, on appeal, was affirmed by the judge. I admit the special appeal, because the evidence on which the decrees of the lower courts are grounded is repugnant to the commonest principles of justice—and direct that the case be remanded, with orders to the judge to transfer it again to the sudder ameen,—or, in his absence, to the principal sudder ameen, who will take evidence as to the assets of the farm for the period it was held by the defendant, and dispose of the case.

THE 20TH MAY, 1846.

PRESENT:

A. DICK,

JUDGE.

CASE No. 269 OF 1843.

Regular Appeal from the decision of the Principal Sudder Ameen of Hooghly, Radha Govind Raee.

NITEEANUND KOONDH CHOWDREE, AND OTHERS, APPELLANTS, (PLAINTIFFS,)

versus

PURTAB NARAIN KOONWUR, AND OTHERS, RESPONDENTS, (DEFENDANTS.)

Pleaders—Sheeoo Narain Chatoorjeeah and Tarik Chunder for Appellants, and Raj Narain for Respondents.

SUIT laid at Company's rupees 6766, 12 annas and 0 pie for nishisht jumma, or adjustment of rent; also for arrears due.

The appellants purchased a putnee tenure at a public sale for arrears, and sued the respondents, except Purtab Narain, before the collector, on the ground that they held possession of the land in question, which was maal, or revenue land, and would pay no rent, alleging it was rent free, lakeraj deotur. The defendants neglected to defend the suit, and a decree in appellant's favor was given by the collector and affirmed by the judge. In virtue of it they bring forward this suit.

The respondent, Purtab Narain, alone defended the suit in the zillah and here. He stated that the former suit was collusive, and that the other defendants, though his relatives, were at variance with him. That the land in question was rent free deotur, and had been attached by the deputy collector for resumption, and the case tried, which was defended by him alone, who was in possession. That the deputy collector on proofs, filed by him, withdrew the Government claim, declaring the land rent free, deotur. That the appellants had objected before the deputy collector, and appealed to the special commissioner for resumption cases, and he had upheld the decision of the deputy collector, therefore the claim of appellants was untenable.

The principal sudder ameen deemed the claim of plaintiffs to the right to assess the lands in question, alleged rent free, illegal, from their extent above 100 beegahs. If they were liable to assessment, the right belonged to Government. The Government had, however,

given up all claim, and declared them to be rent free, and the claim of plaintiffs had been rejected by the special commissioner. The plaintiffs too had not sued the defendant, Purtab Narain, under Regulation II. 1819, when they obtained their decree. Therefore dismissed their claim.

JUDGMENT.

The plaintiffs ground their claim on the decree given by the collector and affirmed by the judge to them in a suit instituted by them, against the respondents, save Purtab Narain, in whose favor these very lands with others were adjudged rent free. Their suit cannot therefore affect Purtab Narain, who was not a party. Moreover, it does not appear how appellant's suit was ever entertained, the claim being to assess alleged lakheraj lands to the extent of 157-7 beegahs.

The appeal is consequently dismissed with full costs.

THE 21ST MAY 1846.
PRESENT:
R. H. RATTRAY,
JUDGE.

CASE NO. 331 OF 1845.

Regular Appeal from a decision of the Principal Sudder Ameen of Shahabad, Munowur Ali Khan, passed June 18th, 1845.

RAEE BISHUNATH SINGH AND OTHERS, HEIRS OF MOORLEE DHUR, AND LULEET RAM AND OTERS, HEIRS OF LULEEKH SINGH AND BUNDHOO SINGH, APPELLANTS, (PLAINTIFFS,)

versus

FUZL BIBI, WIDOW OF DILAWUR ALI KHAN, AND OTHERS HIS HEIRS, RESPONDENTS, (DEFENDANTS.)

Wukeel of Appellants—Mohummud Huneef.
Wukeel of Respondents—Joseph G. Waller.

THIS suit was instituted by appellants, on the 9th December 1844, to recover from respondents the sum of Company's rupees 14,670-11-11, principal and interest, under the following circumstances.

On the 18th February 1813, appellants brought an action against Gholam Ghos, Dilawur Ali Khan, and Imdad Ali, for a piece of land in mouzah Jehangirpore, with wasilat, from 1216 to 1219 Fuslee. While the case was still pending, Gholam Ghos and Dilawur Ali died; and the heirs of the former became defendants in the place of their father; but those of the latter paid no attention to the notice issued on the occasion; and on the 19th August 1819, a decree was

passed adjudging their claim in full to appellants,—the wasilat and costs of suit payable by, in common with the rest, the heirs of Dilawur Ali Khan. This decree was satisfied in full; how, or by whom, does not appear.

On the 18th March 1825, the same persons (appellants) brought an action against Bussawun Khan, Husam Ali Khan, and Ehsan Ali Khan, for wasilat of the same piece of land, from 1220 to 1227 Fuslee, and on the 10th September 1827, got a decree against the three individuals named, whom only they had sued.

Of these Bussawun Khan was one of the heirs of Dilawur Ali Khan, and Husam Ali Khan and Ehsan Ali Khan, were the heirs, before alluded to, of Gholam Ghos.

In satisfaction of this decree, a something had been paid by the defendants against whom it was passed; but the balance not being obtainable, the present suit was brought against the widow and other members of the family of Dilawur Ali Khan, for payment of the sum still due, distinctly adjudged against those, and those only, who were made parties to the suit by appellants themselves; and this too in the year 1844, five years after the twelve allowed by the statute of limitation.

The claim was of course dismissed under the circumstances above exhibited; and with reference to the same, the decision is affirmed, with costs payable by appellants.

THE 23D MAY, 1846.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 156 OF 1844.

Regular Appeal from the decision of the Additional Principal Sudder Ameen of the 24-Pergunnahs.

JEREMIAH HOMFRAY, (DEFENDANT,) APPELLANT,

Others absent in Appeal:—Alfred Parker, Attorney for George Jessop; Nobokishore Mittre Mojmoadar, on his removal, Hurris Chunder Bose, Surbarakar for the two minor sons of Hurris Chunder Ray, deceased; Rajah Radhakaunth Deb, and the Collector of the 24-Purgunnahs,

versus

WILLIAM STORM, (PLAINTIFF,) RESPONDENT.

THE plaint, filed on the 12th May 1841, states as follows. A chur, which long since formed and adjoined the village of Howrah, on the banks of the river, has all along been in the possession of

the proprietors of Howrah. Mr. Roxborough got a pottah, at a fixed rent of 4 biggahs 8 cottahs on this chur; he also bought 3 biggahs of lakheraj land in the said chur from Anund Chunder Chowdree, and held possession of the same. On the 14th of May 1831, I bought the above lands in the tontine from James Cullen, William Melville, George James Gordon, and Robert Thomas Wright, and was put in possession. A new chur has by degrees risen and attached itself to the lands I purchased. As is customary, I have held this new land and cultivated it. The entire chur became the subject of litigation under Regulation II. of 1819, and a decree was passed in favor of Government, which was affirmed in appeal. The collector, in 1833, sent an ameen to measure the decreed lands. In his papers, the above two plots, and the newly formed land, being 16 biggahs 3 cottahs, are measured off in Mr. Roxborough's name, and I am recorded in possession of them; making a total of 24 biggahs 6¼ cottahs, the rent of which I have all along paid to Government. Messrs. Homfray and Jessop were about to build a wall on the land, when, on my application to the magistrate, he directed the collector to attach it, and the latter officer, on the 27th November 1834, declared that Messrs. Homfray and Jessop had no title, and that the increment, under Clause 4, Regulation XI. of 1825, was my right. He accordingly reported to the commissioner in my favor. Some delay occurred in the receipt of the commissioner's order, in consequence of which the collector settled with me for the above 24 biggahs 6¼ cottahs, at a jumma of rupees 124, 9 annas 7 pie, in order to secure the Government against loss. He gave me an ummulnameh on the 23d September 1837, and I have regularly paid my revenue and got receipts for the same. The above gentlemen continued their disputes, and the commissioner ordered the party who was dissatisfied to sue in the civil court. A deputy collector, Omakanth Sein, was directed to make a jummabundee with reference to the ryots on the spot, previous to a settlement being made with the zemindars. While this measurement was going on, Mr. Homfray put forward Holodhur Bose and Beynee Mistree, two of his own people, as though they were on my part. They pointed out the new lands included in my ummulnameh, saying they were in the possession of Mr. Homfray; their object was to have a settlement of them made with him, and they produced evidence in support of their statement. The deputy collector not being aware of their trickery, and, supposing Messrs. Homfray and Jessop were actually in possession of the said lands, recorded their names in the jummabundee papers, which were sent to the Board of Revenue for confirmation. They were however rejected; and an order was passed that the settlement should only be in force for 3 years, and that, in the fourth year, a new settlement should be made; but the zemindars have not up to the present moment agreed.

to it. On the 14th August 1839, hearing all I have above stated, I prayed the collector would investigate the matter ; he ordered a re-measurement, but this was never effected. The newly formed 16 biggahs 3 cottahs are an increment on my purchased lands, and I am entitled to a settlement of them. The former collector gave me an ummulnameh, and I paid him rent for them. I sue for possession of the lands, and to have a settlement of them made with me, estimating their value at rupees 9367 ; also for mesne profits from the 23d Bhadoon 1246 to Bysack 1248, being 1 year and 9 months, at 20 rupees per biggah—rupees 565, 4 annas ; making a grand total rupees 9932, 4 annas, with mesne profits and interest thereon to date of regaining possession. The boundaries of the land are as follows :—

On the west, my purchased rent-free and rent-paying lands; on the east, the river Hoogly ; on the north, a nullah in chur Howrah ; on the south, the boundary of Ramkishenpore. A supplement was put in, on the 24th May 1842, making the area extend to 16 biggahs 18¼ cottahs.

ANSWER OF JEREMIAH HOMFRAY, 29TH JUNE 1842.

The lands are not, as alleged, new lands. They have all along been included in my pottah and in my possession, as will be seen by reference to the deputy collector, Omakaunth Sein's proceedings of the 2d September 1839. The plaint admits that the zemindars are entitled to a settlement with the Government for any land resumed by the revenue officers ; how then could plaintiff, on the 23d November 1837, get an ummulnameh and possession, and how could I have ousted him ? The jummabundee and measurement of 1833 were not sanctioned by the Board, and, on re-measurement, the deputy collector, Omakaunth Sein, settled with me, after I had spent very large sums in buildings on the land to which I am entitled. The proceedings in the criminal court, which I shall put in, will prove my possession. Lukhee Narain ameen's measurement was upset by the Sudder Board, and that made by Omakaunth Sein, upheld: the zemindars gave me a pottah of 16 biggahs 3 cottahs at fixed rent 73 rupees 12 annas; the Sudder Board's letter of the 21st July 1840, proves my right of possession, as do Omakaunth's ameen's papers.

ANSWER OF THE COLLECTOR OF THE 24-PERGUNNAHS, 3D FEBRUARY 1842.

All plaintiff's rights under virtue of the pottah for the 4 biggahs 8 cottahs, at a fixed jumma, granted by the zemindars, are invalid; the resumption at once renders them so: how then can he claim new lands as an increment to them ? Plaintiff has no right to them under the collector's roobakaree of the 27th November 1834 ; the zemindars are the persons entitled to a settlement. Plaintiff and Homfray had disputes after the resumption made by Omakaunth

Sein, who adjusted them on the 2d September 1839. Under the provisions of Section 23, Regulation VII. 1822, the Government ought not to have been sued.

ANSWER OF HURRIS CHUNDER BOSE, MANAGER ON PART OF THE MINORS, 10 ANNAS SHARERS, ZEMINDARS.

After the resumption the Government settled with the zemindars under Regulation XI. of 1822, and a pottah of the new land 16 biggahs 3 cottahs, which was an increment to the land formerly held by the plaintiff, was granted to him by the 10 annas sharer in the zemindaree, who never ousted the plaintiff.

ANSWER OF RAJAH RADHAKAUNTH DEB,

the sharer of 6 annas of the zemindaree,—supports the above.

ANSWER OF ALFRED PARKER.

Jessop, on the 16th March 1840, sold all his right to Homfray, since which he has been in no way concerned with the property in dispute; how then could I, Jessop's attorney, have dispossessed plaintiff? Homfray is responsible.

The additional principal sudder ameen, on the 2d March 1844, gave judgment in favor of the plaintiff, in the following terms:

I consider plaintiff entitled to the disputed lands which adjoin his purchase: he got an ummulnameh of them from the collector, and after they were settled, got pottah from the zemindars. The defendant, Mr. Homfray's pottah is not genuine; the plans and evidence put in by both parties prove the lands are new, and an increment to the land formerly held by the plaintiff; and under Section 4, Regulation XI. of 1822, he is entitled to them. Mr. Homfray in person admits he broke down a wall to the north of the disputed land; it is clear this was done to destroy the boundary and to get possession of plaintiff's land. An order passed on a petition presented to the collector, dated the 18th September 1832 shows plaintiff paid the rents of the land and got receipts for the same.

Lukheenarain ameen's measurement papers of 1833 or 1240 B. S. prove the lands were measured off in plaintiff's name. The collector's roobikaree of the 27th November 1834, shows the new lands were, in consequence of their adjoining plaintiff's purchased lands, under Section 4, Regulation XI. of 1825, settled with him; and the assistant collector on the 8th December 1825 gave him possession; and he has held them siñce 1831, when he purchased Roxborough's rights. Mr. Homfray has endeavored forcibly to build on this land, and was fined by the collector in consequence. The zemindars in their answers admit they gave pottahs to the plaintiff.

The defendant's pottahs are not valid: he does not say in his answer and rejoinder when and how he got it, or how he holds the lands. The zemindars deny the pottahs defendant has put in; they are drawn out on stampt paper of some 8 or 9 months previous to the

date the pottahs were granted, the defendant has filed no receipts from the zemindars for rents paid. Defendant states he got a pottah in 1232 or 1826 A. D.; five years after this, in 1830, he petitioned the collector, saying he had 2 biggahs only of land, to which some land had adjoined, and begged he might be allowed to settle for them. On report of a canoongoe, they turned out to be 7 biggahs 4 cottahs, and Mr. Homfray allows *they* are not the contested lands. If the lands now litigated were in 1826 in his possession under the *pottah*, why did he five years afterwards call them *new* lands, and apply for settlement to the collector? The lands are new, and never were in defendant's possession, by his own shewing. When the defendant Homfray went into the insolvent court in 1830, he did not include, as he admits, the disputed land in his schedule.

As the collectors by their proceedings have been the cause of much litigation between the parties in this case, the Government must pay its own costs. I decree possession of the disputed lands to plaintiff as per boundaries defined in the plaint; his costs and those of the zemindars are charged to the defendants Homfray and Parker.

BY THE COURT.

The lands in dispute are clearly of recent formation, and were in consequence resumed in 1829 by the Government officers, with whom the 10 annas and 6 annas sharers, zemindars, in July 1841, engaged for them. Before that period respondent (plaintiff) held the lands under the collector, and paid rents to him: after the settlement with the zemindars, they granted pottahs to him, as stated in their answers: they moreover state the lands are an increment to the land originally held under purchase by the respondent.

On the other hand, the zemindars deny the pottahs of the 28th Phalgoon and 5th Cheyt 1232, filed by the appellant. Appellant in his *answer* alleges the disputed lands are included in the said pottah, and denies they are of recent formation; yet admits at the same time that they were resumed by Government; that the zemindars engaged for them with the revenue officers, and that he got a mokurruree pottah from them at 73 rupees 12 annas, which document is not on the record. It is also admitted by appellant in his grounds of appeal, that these lands were an increment to the original lands purchased by respondent long before these last were pledged by appellant to the tontine society, and purchased from them; but it is urged the original, and not the chur lands were sold, and that respondent is entitled to the former only. Setting aside, that the answer and the grounds for appeal are at variance one with the other, in the important matter of the lands being old or newly formed, it is by no means proved that appellant held the new formation at any period subsequent to the respondent's purchase in 1831. Before the resumption and the settlement in 1841, appellant

had no proprietary rights; after it he clearly had none under the provision of Section 4, Regulation XI. of 1825. Indeed by the terms of the 3d paragraph of his answer, he distinctly acknowledges the rights of the zemindar, upon whose pottahs, alleged to have been granted after the resumption, he relies, though he does not produce them.

The lands in dispute are an increment to those purchased by the respondent, and on their resumption by the Government were engaged for by the zemindar from whom respondent has obtained pottahs. The Court therefore affirm the decree of the additional principal sudder ameen, with costs against Homfray, and also against Parker, absent in appeal.

THE 23D MAY 1846.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

CASE NO. 157 OF 1844.

Regular Appeal from the decision of the Additional Principal Sudder Ameen of the 24-Pergunnahs.

GOVERNMENT, (DEFENDANT,) APPELLANT,

versus

WILLIAM STORM, (PLAINTIFF,) RESPONDENT.

THIS appeal, together with the appeal No. 156, having been laid before the Court, they observe that they were both preferred against one and the same decision. As the parties in this have adjusted their suit, on confession of judgment by the respondent, the Court decree in favor of the appellant, and direct that a copy of their judgment, in the case No. 156, be hereunto annexed.

THE 28TH MAY, 1846.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 251 OF 1838.

KALEE KISHEN NAUG, (PLAINTIFF,) APPELLANT,

versus

RAM NIDHEE BOSE, PRAN KISHEN BOSE, TARAMONEE MOTHER OF THAKOOR DOSS BOSE, MINOR SON OF PUDDUN LOCHUN BOSE, AND MANICK CHUNDER BOSE, (DEFENDANTS,) RESPONDENTS.

Claimant—Receiver of the Supreme Court on part of Ashotoose Dey and Promothonauth Dey in loco *Bholanath Chuckerbutty, Appellant.*

THIS case was disposed of by the Court on the 31st August 1842, present Messrs. Lee Warner and Barlow, when a decree was passed in favor of Kalee Kishen Naug, the then appellant. The original defendants were absent in appeal. Bholanath Chuckerbutty however appeared as a third party; he was also present in the first instance in the zillah court.

On the 30th November 1842, an application for a review of judgment was made by the said Bholanath, which, after certain investigation held by order of the Court, was admitted on the 23d March 1844, by Mr. Barlow.

The plaintiff sued for possession of 10 annas of Talook Kaguzpokoreah, in the name of the defendant Ram Nidhee, in the collector's books, but belonging to all the defendants. He stated that the defendants mortgaged the above property on the 7th Poos 1233, or 21st December 1826, for the sum of 20,000 rupees, payable, with interest at 12 per cent, in Phalgoon 1240. In Bysack 1241, the period having expired without payment, plaintiff issued notice of foreclosure; the defendants did not appear; the sale then became absolute, and this suit was instituted on the 8th January 1836, for possession, at 3 times the sudder jumma of the 10 annas share, i. e. 3469 rupees 10 annas, the action being laid at 9998 rupees, with mesne profits.

None of the defendants appeared in the court of first instance.

Bholanath Chuckerbutty, as a third party, put in the following claim, stating that the plaintiff and defendants were in collusion;

that in 1233 the plaintiff was not seven years old; that he had not yet attained his majority, and consequently that no transactions could have taken place between the parties; that Ram Narain Naug, the plaintiff's father, is an uncle of Ram Nidhee, who, whilst he was in the service of Alexander and Co., in 1828 A. D. or 1235 B. S., made away with certain sums of money, to repay which the said Ram Nidhee, on the 14th Phalgoon 1235, or 7th May 1829, mortgaged the 10 annas share to Bhogwan Chunder Ray, claimant's brother, for 15,000 rupees, who had ascertained from Ram Narain that there was no lien on it. Bhogwan took a farm of the estate in the name of Kalee Churn Dhole, by whom the Government revenue was to be paid. The farm had not expired when Messrs. Lewis and Co. sued Ram Nidhee in the Supreme Court, and attached the estate; as also did one Iswor Chunder Bhuddur. To clear it, Ram Nidhee borrowed a further sum, which, with the former loan, amounted to 29,000 rupees; and for this last sum on the 11th Bhadoon 1238, or 26th August 1831, gave a judgment bond in Bhogwan Chunder's name in Mr. Denman's office, cancelling the former document. Kalee Chunder Dhole's farm was transferred to Gungadhur Gungoolee on the security of Ram Narain Biswas, and he got possession and paid the Government revenue for two years.

On claimant's brother's death plaintiff got possession for a time, and threw the estate into arrears. On the expiration of the mortgage, which was for three years, claimant sued in the Supreme Court; the estate was put in charge of the receiver, and the sale was postponed; and at length he obtained judgment in his favor and order for possession. When the estate was put up for arrears, plaintiff did not pay up the balance. The plaint, it is urged, is brought in a false name, and a suit should have been brought against claimant in possession.

The judge of Nuddeah, on the 30th June 1837, was of opinion that the plaintiff and the defendants were in collusion, and dismissed the suit; in his judgment he adverted to the decree passed by the Supreme Court in favor of the claimant, but satisfied himself without issuing further orders in the case. On appeal to the Sudder Dewanny Adawlut by Kalee Kishen Naug, the Court observed that the judgment of the Supreme Court affected Ram Nidhee Bose only, not the other three sharers, whose signatures Bholanath, the claimant, did not prove; that the document signed by all the sharers in favor of the plaintiff, appellant, was proved by evidence; and moreover that claimant's alleged possession was by no means clearly established. Under the above circumstances, a decree was given in favor of the appellant, and judgment passed against the three respondents, Manick, Pran, and Puddun Lochun.

The case was again brought before the Court, as already stated, on an application for review of judgment by the receiver of the Supreme Court, and, on its admission by Mr. Barlow, was laid before a full bench.

BY THE COURT.

At the foot of the original mortgage bond, dated the 7th Poos 1233, or 21st December 1826, is a detail of 14 Bank of Bengal notes, the numbers, value, and dates of which are specified, as per list annexed, said to have been given by the plaintiff to the mortgagers in part payment, to the amount of 10,000 rupees of the loan, 20,000 rupees, granted. It appears however from the evidence of Mr. Lee and Seeb Chunder Seet, officers of the bank, that of these notes seven were in the hands of the bank on the day on which the payment is alleged to have been made, and two were not in existence for a twelve month subsequent to the date of the bond. Such evidence is incontrovertible proof that the bond was not executed on the date it bears, which constitutes forgery, and establishes collusion between the original plaintiff and the defendants. The Court therefore set aside and declare the deed to be null and void. Costs are charged to the appellant and the respondents who have appeared in this Court, and who are to pay the costs of the claimant in equal shares. The case being one of an aggravated character, the Court have directed that proceedings be instituted against certain of the parties concerned, in the criminal court.

Numbers of Bank of Bengal Notes specified in the Mortgage Bond, dated the 7th Poos 1233, or the 21st December 1826.

Number.	Value.	Date of issue.	Date of return.	Date of re-issue.	Remarks.
	Rs.				
2307*	1000	3d Mar. 1825,	9th May 1825,	19th Mar. 1827	
7779§	1000	27th Dec. 1827,			
296*	1000	27th Aug. 1824,	16th April 1825,	....	Cancelled 12th September 1827.
242*	1000	24th Aug. 1824,	9th May 1825,	10th Mar. 1827	
88*	1000	16th Aug. 1824.	16th June 1825,	....	Cancelled 5th March 1827.
303	1000	27th Aug. 1824,			
3454*	500	13th July 1826,	5th Sept. 1826,	17th Mar. 1827	
2223	500	25th April 1825,			
306	500	6th Sept. 1824,			
4418§	500	24th Dec. 1827,			
3077*	500	3rd Feb. 1826,	8th May 1826,	....	Cancelled 17th September 1827.
1956	500	23d April 1825,			
2469	500	24th Sept. 1825,			
3069*	500	3d Feb. 1826,	5th Sept. 1826,	17th Mar. 1827	

Notes marked * were in the Bank of Bengal on the 21st December 1826.

Notes marked § did not issue from the said bank till the month of December 1827.

THE 28TH MAY 1846.

PRESENT:

C. TUCKER and
J. F. M. REID,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

PETITION NO. 963 OF 1844.

IN the matter of the petition of Deo Narain Pandy, for self and his nephew Bhowany Pandy, filed in this Court on the 20th November 1844, praying for the admission of a special appeal from the decision of Syed Monowur Ali, principal sudder ameen of zillah Shahabad, under date the 18th July 1844, amending that of Molvee Mazum Hossein, sudder ameen of said zillah, under date 29th, December 1843, in the case of Deo Narain and Bhowany Pandy, plaintiffs, *versus* Shewun Pandy, defendant.

It is hereby certified, that the said application is granted on the following grounds.

In this case the courts below, though decreeing to the plaintiffs, possession of lands of which they had been dispossessed by the defendant, refused to award wasilat, on the plea that the plaintiffs had not furnished sufficient data for fixing the amount. This is contrary to the invariable practice of the courts. If any doubts arise as to the amount of wasilat, the same are determined by appointing an ameen to ascertain the actual receipts in the mofussil. This application therefore is admitted; and the case having been brought forward, it is ordered that the proceedings be returned to the principal sudder ameen, who will restore the case to his file, and then send it back to the sudder ameen, with orders to ascertain the wasilat due to the plaintiffs on the lands decreed to them, from the date of their dispossession up to the date of the institution of the suit—from which latter date to the date on which they may regain possession, the wasilat can be given, at the same rate, in execution of the decree.

THE 30TH MAY, 1846.
PRESENT:
R. H. RATTRAY,
JUDGE.

CASE No. 369 OF 1845.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Tirhoot, Syud Ushruf Hosein, August 21st, 1845.

RAM NURAIN SING AND LUCHMUN SING, APPELLANTS, (DEFENDANTS,)

versus

MUHUNT JUGURNATH DAS, RESPONDENT, (PLAINTIFF.)

Gholam Ahmud Khan, Wakeel of Appellants, Mirza Aman Ali Khan, Wakeel of Respondents.

THIS suit was instituted by respondent, on the 18th December 1844, to recover from appellants the sum of Company's rupees 5,973-5-4, principal and interest, paid for land not obtained.

The plaint is, that, 'on the 17th Magh 1240 Fuslee, (22d January 1833,) plaintiff (respondent) paid Company's rupees 2800, for a 2 annas share of lands situated in mowzahs Chutoon and Gokul Ramkishen; a *cowaleh* (or deed of sale) for the same being executed by defendants (appellants,) and Tirb'hawun Singh, since deceased; that the *cowaleh* was registered; that it was agreed, that the names of the sellers should be entered on the collector's books in place of the name of their father (deceased;) and that, this being done, the usual entry should record the transfer to plaintiff; that this being put off from time to time, plaintiff went to the villages in person to try and get possession, when defendants opposed him, and raised a disturbance; that plaintiff had at length resolved upon bringing an action against defendants, when, on the 18th May 1840, mouzah Gokul Ramkishen was sold, and on the 7th June 1844, Chutoon was also brought to sale,—both for arrears of Government revenue. Defendants refusing to refund the purchase money, plaintiff brings this suit to recover it.'

Defendants answer, that 'nearly twelve years elapsed from the date of the *cowaleh* before the plaint was filed; that by the plaintiff's own admission, one of the villages was not sold for seven years, and the other not for eleven years after the purchase of 1240 Fuslee (1833); that if the *cowaleh* were genuine, plaintiff would not have delayed so long to claim the land or the money; that, on the date mentioned, no *cowaleh* for 2,800 rupees was executed; but one for

2,200 rupees was so; that plaintiff settled a debt due by them (defendants) to one Lala Chuttursal Singh, amounting to 836 rupees, as part of payment of the money, and agreed to satisfy another demand against them, within a week, of 500 rupees, due to Lala Kashinath and Lala Kishunpurshad, but no written promise was given in regard to this; that, for the balance, 864 rupees, plaintiff gave a *chit'hee* (or note) engaging to pay it in Cheyt 1240 Fuslee, which *chit'hee* is forthcoming; that, with reference to the above arrangements, the *cowaleh* was given over to plaintiff without being registered; that the payments promised by plaintiff were not made, and all they could get from him was, that, when he did pay, he would take back his *chit'hee*, get the *cowaleh* registered, and enter upon his purchase; that nothing further took place—defendants said nothing, and plaintiff did nothing in regard to possession; that, whether plaintiff has altered the *cowaleh* granted, or fabricated a new one, defendants cannot say; and finally, that letters can be produced shewing the balance left unpaid by plaintiff to have been demanded by them.'

Before the courts it was established, that the *cowaleh* for 2,800 rupees was registered in the presence and with the assent of the witnesses and the mokhtar (attorney) of defendants: the *chit'hee* filed by defendants, bears date the 20th Maghh 1240 Fuslee, but is sworn to by their witnesses as executed and delivered on the 17th, a few hours after the *cowaleh,* which bears the latter date: and they (the witnesses) say they saw the sum of 836 rupees paid to defendants simultaneously with the delivery of the *chit'hee,* which sum of 836 rupees, defendants themselves do not pretend to have received, but indirectly through Chuttursal Singh, whose claim it satisfied. The *cowaleh* itself acknowledges the receipt of the full sum of 2,800 rupees by defendants; and the witnesses to it, swear to the admission by them (defendants) of the whole having been paid to them. The letters demanding the asserted balance, alluded to by defendants, were not produced.

With reference to these facts and circumstances, the claim of plaintiff was admitted, and a decree passed in his favor; and on the same grounds the judgment is now affirmed, with costs payable by appellants.

TABLE OF CASES.

REGULAR CASES.

APPLICATIONS FOR SPECIAL APPEAL.

THE 3D JUNE 1846.

PRESENT:

C. TUCKER,

J. F. M. REID, and

A. DICK,

JUDGES.

CASE No. 203 OF 1843.

Regular Appeal from the decision of the Judge of Rajshahye, Mr. G. C. Cheap.

BUHWANEE CHURN MITR, APPELLANT, (DEFENDANT,)

versus

JY KISHUN MITR, THEN GOPEE MOHUN BOSE, AND GOLUK CHUNDER SINGH, RESPONDENTS, (PLAINTIFFS.)

Pleaders—Raj Narain for Appellant, and Pursun Koomar and Gholam Sufdur for Respondents.

SUIT laid at Company's rupees 13,200, annas 0, pie 0, for possession on certain villages, mouzaat Nugur, &c., tuppah Chupeelah, and mesne profits.

The appellant mortgaged the property in dispute to one Sheeoonarain Ghose for 15,000 rupees and gave him a bond in judgment; and also a deed empowering him to sell the property mortgaged, if the loan were not repaid by a specified day. The loan not having been paid, the mortgagee obtained a decree on the judgment bond; and he sold the property mortgaged publicly by auction at the Calcutta Exchange. The respondent purchased the property, and instituted this suit for possession, and obtained a decree from the zillah judge for possession only. The appellant, dissatisfied therewith, preferred this appeal.

The pleas of appellant are; 1st, that the whole of the loan was not given him; 2dly, that the sale was illegal, under rules of the Supreme Court No. 14, no process of *scire facias* having been previously issued; 3rdly, that if the case be decided under regulation law of the Company's courts, a previous notice, under Regulation XVII. of 1806, was indispensable; and 4thly, that a considerable portion had been repaid of the sum lent, of which he held proofs, but which the judge would not receive.

The respondent contended that the regulation law did not apply, since the parties lived within the jurisdiction of the Supreme

Court, and the transaction had been conducted in conformity with English law; that they held a judgment of the Supreme Court; and that sales made under deeds similar to that under consideration were always upheld by the English courts of equity; that the appellant was barred from pleading non-reception of the whole loan, by the decree obtained on the judgment bond, and that therefore the decision of the zillah judge was perfectly correct.

The case came on for hearing before Mr. A. Dick, who referred it to a full court, to consider: 1st, Whether both parties being residents under the jurisdiction of the Supreme Court, and the transaction conducted in conformity with the law that Court administers, and the Court therefore having full power by its constructive jurisdiction to execute the judgment they might pronounce, the respondents, plaintiffs, should not have sued for possession in that Court? 2ndly, Whether the conduct of the mortgagee in the transaction, coupled with the institution of this suit in the Company's courts, was not virtually an attempt to evade regulation law, and also the law of procedure in the Supreme Court? 3rdly, Whether on the above considerations, the claim should not be dismissed, and the appeal decreed with full costs?

JUDGMENT.

The Court ascertained from answers to a series of questions put to the respondents' pleader, Pursun Koomar, with whom was Mr. T. Morton, a barrister of the Supreme Court, that the respondent had no remedy in the Supreme Court, either in law or in equity. The Supreme Court would not admit a suit for ejectment, as the monthly tenants of the property in question were not amenable to its jurisdiction, and it is only on an action for ejectment that they would entertain a suit for right and title. Therefore the Court affirm the decision of the zillah judge, decreeing possession; and further, award usufruct from the date of purchase to the date of obtaining possession.

THE 3D JUNE 1846.

PRESENT:

C. TUCKER,
J. F. M. REID, and
A DICK,
JUDGES.

CASE No. 204 OF 1843.

Regular Appeal from the decision of the Judge of Rajshahye, Mr. G. C. Cheap.

SUIT laid at Company's Rupees 1570-0-0 for possession of mouza Shebshar, pergunnah Muhumudpore, and for mesne profits.

In every particular this case is the same as the former one, No. 203 of 1843. The judgment is, consequently, precisely the same.

THE 6TH JUNE 1846.

PRESENT:

J. F. M. REID,
JUDGE.

PETITION No. 139 OF 1845.

IN the matter of the petition of Mohun Ram Tewaree, filed in this Court on the 26th March 1845, praying for the admission of a special appeal from the decision of Mahomed Majid, principal sudder ameen of zillah Bhagulpore, under date the 24th December 1844, amending that of Fuqeer Hosein, moonsiff of Noorgunge, under date 15th July 1844, in the case of Mohun Ram Tewaree, plaintiff, *versus* Lalla Bukhoree Lall and others, defendants.

It is hereby certified that the said application is granted on the following grounds.

The plaintiff sued to prove his right to irrigate his lands from a certain water course, and obtained a decree from the moonsiff against Bukhoree Lall, the zumeendar. The principal sudder ameen, in appeal, nonsuits the original claim, because the plaintiff did not, as directed by the magistrate on a petition from some of his (petitioner's) servants for permission to irrigate from the water course, institute a suit under Act IV. of 1840. The petitioner was fully justified in bringing his suit at once into the civil court to have his right formally and finally investigated, rather than go into the magistrate's court for a summary order, which was liable to be upset in a regular suit. This is not a good ground for nonsuit; and the petitioner might have applied for a summary instead of spe-

cial appeal. I admit a summary appeal, and, reversing the principal sudder ameen's order, direct that he restore the appeal to its number and decide it on its merits. The value of the stamp, except as required for a summary appeal, will be returned.

THT 6TH JUNE 1846.

PRESENT :

J. F. M. REID,

JUDGE.

PETITION NO. 141 OF 1845.

IN the matter of the petition of Pearee Mohun Ghose and others, filed in this Court on the 26th March 1845, praying for the admission of a special appeal from the decision of Moulvee Mahomed Kullim, 1st principal sudder ameen of zillah Jessore, under date the 23rd December 1844, affirming that of Ahmed Ali, moonsiff of Lohargurha, under date 28th February 1839, in the case of Riayet Ali and Surroop Chunder Shah, plaintiffs, *versus* Pearee Mohun Ghose and others, defendants.

It is hereby certified that the said application is granted on the following grounds.

This case was in the first instance tried by the moonsiff of Lohargurha, who, on 28th February 1839, decreed the appellant's claim for possession of certain land. The former principal sudder ameen, Byjnath Sein, confirmed the decision of the moonsiff on the 17th September 1841; but the judge, on a special appeal being preferred, upset both decisions on the 5th May 1842, and sent back the case for retrial. The principal sudder ameen, instead of sending the case to the moonsiff, tried it himself. His decision must therefore, on the precedent of the case of Chowdry Sahib Singh *versus* Telukdharee Singh, decided by this Court on the 6th July 1842, (see page 34, of part 2, of the 1st volume of Select Reports of Summary Cases,) be held to be the decision of a court of first instance, consequently the appeal therefrom lies regularly to the judge, and not specially to this Court. The petition of special appeal is therefore rejected, and, period of appealing having elapsed, one month is allowed to the petitioner to apply to the judge for a regular appeal. The usual order issued for the return of the stamp.

THE 8TH JUNE 1846.
PRESENT:
R. H. RATTRAY and
C. TUCKER,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 11 OF 1845.

Special Appeal from a decree passed by the Principal Sudder Ameen of Shahabad, Syud Munowur Ali, December 5th, 1843; *reversing a decree passed by the Moonsiff of Arrah, A. R. DeSouza, May 5th,* 1843.

JANKEE RAEE AND LALA RAEE, APPELLANTS, (PLAINTIFFS,)
versus
DERIAO KANDAO AND CHUHCOWREE, RESPONDENTS, (DEFENDANTS.)

Wukeel of Appellants—Raj Narain Dutt.
Wukeel of Respondents—Luchmee Pershad.

THIS suit was instituted by appellants, on the 14th November 1842, to recover from respondents one beegah, 5 beeswahs of land, assigned, rent-free, in lieu of wages, to Bukhshun Khakool, in consideration of his services, prospectively, as a sweeper. Bukhshun died, and his widow resigned all claims as such; but respondents refused to restore the land to appellants, the proprietors, on the strength of a lease granted to them by Bukhshun, on an advance of rent not yet realized. An action was brought to eject them, and recover possession in the court of the moonsiff, who decreed the resumption sought; but on appeal to the principal sudder ameen, the judgment of the moonsiff was set aside, and a decree passed maintaining respondents in possession till their advance as lessees should be satisfied either by appellants, or the usufruct of the land.

To try the justice and legality of this decree, a special appeal was admitted by the Sudder Court.

With reference to the conditional tenure of continued service, under which Bukhshun held the land now contested; and to his death, and the consequent discontinuance of the service which was agreed to be rendered by him for his occupancy; we are of opinion that the lease executed by him to respondents, was beyond his

legal competence to grant; and determining the same to be null and of no effect, we reverse the decree passed by the principal sudder ameen, and affirm that of the moonsiff, with all costs payable by respondents.

THE 8TH JUNE 1846.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 27 OF 1845.

Special Appeal from a decision passed by the Judge of Sarun, G. Gough, December 6th 1843, affirming a decision passed by the Principal Sudder Ameen, Syud Imdad Ali, May 13th, 1843.

ACHEE LAL AND SUNHEE RAM, APPELLANTS, (PLAINTIFFS,)

versus

BIBI BASREH AND OTHERS, HEIRS OF SHEIKH AMEEROOLLAH, SHEO SUHAEE, AND LULEET RAM, RESPONDENTS, (DEFENDANTS.)

Wukeel of Appellants—Gholam Ahmud.
Wukeel of Respondents—Edward Colebrooke.

THIS suit was instituted by appellants, on the 13th May 1843, for the refund of Company's rupees 1587-6-10, principal and interest, amount paid for a sale-purchase from which appellants have been since ejected.

In this case, appellants purchased, at a sale made in execution of a decree in favor of Sheikh Ameeroollah, the rights and interests of one Sheikh Chummun, said to consist of an eighth share of mouza Pursotumpore, for 1400 rupees. This money was paid away by the court to Ameeroollah and other decree-holders, entitled to participate in the sale proceeds. After the lapse of some seven years, during which appellants had held uninterrupted possession, the sisters of Sheikh Chummun, three in number, instituted suits severally to eject them (appellants,) on the ground of the property, sold as their brothers', being exclusively theirs, in the pro-

portion claimed by each respectively; he, the brother, Sheikh Chummun, having no right or interest in it whatever. They succeeded in establishing their claim, and obtained decrees, under which appellants were obliged to yield up their purchase; in consequence of which the present action was brought by the latter to recover, from Ameeroollah and the other decree-holders, the amount of their purchase money, paid to and received by them (Ameeroollah and the others,) through the court, as above stated.

The zillah courts decided against them (appellants,) on the ground of the sale having involved only, as expressly notified at the time, 'the rights and interests' of Chummun, without any exposition of what those rights and interests might be, or any guarantee whatever prospectively, to the purchaser, in regard to what he bought at his own discretion, and at his own risk and responsibility.

The Sudder Court, not finding any precedent to guide them in the disposal of the question, and deeming it one of great general importance, admitted the special appeal; with a view to its being discussed in presence of the parties immediately concerned, and disposed of by a full bench.

The result of this discussion, after a due consideration of the question in all the variety of views in which it has been placed before the Court, is a decided opinion that the appellants are entitled to a refund of their purchase-money.

Without entering into an elaborate detail of the grounds upon which their judgment in the case is based, it seems proper to the Court to note, that the principle recognized by them, and which has mainly governed that judgment, is, that, to constitute a sale, *something* must be given for the consideration paid. The denial of appellants' claim by the lower courts, because the rights and interests of the supposed possessor of some such in the land, alone were advertised and sold, is, the Court conceive, based on a miscomprehension of what such notices and such sales must be construed to involve. The 'rights and interests' are generally—probably always—notified as extending through the whole or a specific portion of the estate named: in the present instance, the rights and interests of Sheikh Chummun in a two annas' share of Mouzah Pursotumpore, were advertised, sold, and purchased. Eventually—seven years afterwards, that is—it was found that this individual had no rights and interests in the property, whatever; and when the purchasers were dispossessed and applied for their money back again they were told, that nothing having been guaranteed to them at the time of sale, they had no claim to what they sought to recover. The Court are of opinion that something *was* guaranteed to them, viz. rights and interests of some sort, however inconsiderable, vested in the man Chummun, in the portion defined as a two annas' share of the estate named. If it were not so, nothing was sold, and nothing was purchased; the proceeding is reduced to a gambling transac-

tion—to a lottery,—in which the appellants purchased a ticket, which turned up a blank.

The decree passed in favor of one only of the sisters of Chummun, is filed with the proceedings; but it is not denied by respondents that the other decisions were to the same purport; and the appellants are shewn not only to have been dispossessed of their purchase, but to have been made responsible for mesne profits during the period of their occupancy.

With reference to these facts and circumstances, and to the sale having been ordered on the petition and representation of respondents themselves, to realize their claims from the 'rights and interests' which they asserted to exist, the Court reverse the decision appealed from, and decree the amount sued for, with interest to the date of payment, in favor of appellants. All costs to be made good by respondents.

THE 11TH JUNE 1845.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 197 OF 1845.

Regular Appeal from the decision passed by the 2d Principal Sudder Ameen of Patna, Mohummud Ibrahim Khan, June 5th, 1845.

AMIR ALI KHAN, APPELLANT, (PLAINTIFF,)

versus

MAZUM ALI KHAN, RESPONDENT, (DEFENDANT.)

Wukeels of Appellant—Hamid Russool and Gholam Sufder.
Wukeels of Respondent—Ameer Ali and Aftabadeen.

THIS suit was instituted by appellant on the 9th August 1843, to recover from respondent the sum of Company's rupees 90,011-9-11, principal and interest; being the wasilat (or mesne profits,) of mouzah Punhur and others, from 1235 to 1238 Fuslee.

The statement of the plaintiff (appellant,) is, in substance, as follows—

'Himmut Ali Khan, plaintiff's father, fell sick. At that time plaintiff was very young; and, adverting to this, his father made a will, by which Mozuffer Ali (Himmut Ali's brother) was nominated his (plaintiff's) guardian and general manager of the estates, with full powers of acting. The *wuseeutnamah* (will) bore date in 1236 Hijree (1228 F.,) in the month of Rujub, of which year plaintiff's father died. As widow of the deceased, plaintiff's mother took possession of the property; but the management of every thing was

held and exercised by his guardian, from that time to 1234 F. On the 26th of Ramzan, in the *Fuslee* year 1235, Mozuffer Ali died, leaving three sons, viz. Mazum Ali, (defendant,) Mehdee Ali, and Wajid Ali, and Musst. Mehronissa, his widow. In the course of the year (1235 F.) Mazum Ali and Mehdee Ali, for themselves and on behalf of Wajid Ali (then a minor,) with Musst. Mehronissa, executed an *umanutnameh* in the name of Musst. Wajideh, plaintiff's mother, for the sum of Sicca rupees 99,991-15, being the surplus proceeds of the estate from the time of Mozuffer Ali's taking charge to the end of 1234 F. The purport of this deed was, that when plaintiff should attain his majority, those who had subscribed their names to it were bound by it to pay to him the sum mentioned. At the same time plaintiff's mother executed a *mokhtarnameh*, (or power of attorney,) conferring upon defendant the same powers as her husband had given to Mozuffer Ali, and settled an allowance upon him of a hundred rupees a month; defendant, in return, giving an *ikrarnameh* (or agreement,) acknowledging the trust, and promising to restore the estate with a full account of all matters connected with the management of it, and to pay all profits that should accrue during the period of his charge to plaintiff; deducting only the actual expenditure incurred and the salary agreed to be paid for his own services. Under this arrangement, defendant managed the estate, disbursing and collecting till 1238 F. In 1239 F. plaintiff came of age and assumed possession; but defendant has not rendered any account of his trust, and has withheld all surplus profits. Taking the returns of 1234 F. as the basis of the estimate, the yearly nett profits may be reckoned at Sicca rupees 10,548-4, as per accounts prepared by Roop Lal Mutsuddee; and at that rate plaintiff now sues.'

In answer, defendant does not deny having held the management of the estate, as represented; but rejects the imputation of any misappropriation of its proceeds. The vouchers, receipts, and documents he holds, will show, that what has been done, has been performed with all honesty, and for the benefit of those concerned.

In support of appellant's statement, the several deeds and instruments mentioned in it, are filed with the proceedings; and, with these, is the copy of a decree (of June 15th 1835,) in his favor against the parties to the *umanutnameh* (for Sicca rupees 99,991-15), which came into operation on appellant's majority; but the terms of which had not been fulfilled by them. The balance about 78,000 rupees, proved to be due, was, in the end, amicably adjusted; and under the final judgment of the zillah court in the case, every thing between appellant and the members generally of Mozuffer Ali's family, was settled to the end of the Fuslee year 1234.

The present claim is for the proceeds of the four years, 1235 to 1238 F.; but all the documentary evidence filed, consists of what had before

been exhibited in the case just noted. There is not one paper of any kind or description whatever, bearing on the question to be now determined; and all that appellant would seem to have relied upon, is the oral testimony of five individuals, who depose, very loosely, to insulated facts and occurrences, which they are unable to fix, by dates, or reference to any writings or accounts, that, if as stated, must have been forthcoming to corroborate them.

With reference to this, and to the consequent absence of any thing that might impugn, or disprove the correctness of what has been produced by respondent in support of his honest fulfilment of his trust, the second principal sudder ameen dismissed the claim; and, on the same grounds, the decision is affirmed, with all costs payable by appellant.

THE 13TH JUNE 1846.

PRESENT :

R. H. RATTRAY,

JUDGE.

CASE No. 210 OF 1845.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Bhagulpore, Mohummud Majid Khan, passed July 18th, 1845.

BIRJ NARAIN SINGH, APPELLANT (PLAINTIFF,)

versus

RAJAH TEK NURAIN SINGH AND PIRTEE NARAIN SINGH, RESPONDENTS (DEFENDANTS.)

Wukeel of Appellant—Pursun Komar Thakur Raee Bahadur.
Wukeel of Respondents—Joseph G. Waller, Hamid Rusool and Ewuz Ali.

THIS suit was instituted by appellant, on the 9th March 1844, corresponding with 1251 Fuslee, to recover from respondents Company's rupees 12,021-9-2, principal and interest, amount of rent, from 1236 to 1238 F., on a 2 annas share of talook Puchguchea.

The respondent, Pirtee Narain Singh, is the son of the original lessee, Deghumber Singh; the other respondent and the appellant were the parties to the suit No. 98 of 1844, decided by the Court on the 18th September last; and the land is that mentioned under the same designation, in the Court's proceedings of that date. (See Decisions of Sudder Dewanny Adawlut for 1845, page 301.)

The claim was for money, to the amount stated, paid by the lessee to Tek Nurain, in the years specified; a subsequent decree of the Sudder Court, passed in 1836, having cancelled all the presupposed rights of Tek Nurain, who had further recovered all

sums advanced by him, upon which (advances) these rights had previously been deemed to rest.

The principal sudder ameen dismissed the suit under the statute of limitation.

In appeal, the decree of 1836 has been claimed to constitute the ground of action; but under the circumstances exhibited in that case, and in No. 98, such claim is clearly inadmissible, and the statute of limitation must be allowed to operate.

The decision of the lower court is affirmed, with all costs payable by appellant.

THE 13TH JUNE 1846.

PRESENT:

A. DICK,

JUDGE.

CASE No. 245 OF 1843.

Regular Appeal from the decision of the Principal Sudder Ameen of Dacca, Mr. James Reily.

MOOST. OOJHUL MUNEE, RADHA GOVIND SHAH AND OTHERS, APPELLANTS, (PLAINTIFFS,)

versus

BUNSEE LOCHUN MITR, MOOST. RUGOO MUNEE CHOWDRAIN AND OTHERS, RESPONDENTS, (DEFENDANTS.)

Pleaders—Tarik Chundur and Pursun Koomar for Appellants, and Neel Munee Banerjee and Mr. Waller for Respondents.

SUIT laid at Company's rupees 10,062, 3 annas 0 pie, principal and interest, of debt on bond.

The claim is founded on a bond, which sets forth that the money was borrowed to pay up arrears of revenue of a certain estate belonging to the respondents. The bond is admitted by some, and denied by others of the respondents; but all assert that the lenders of the money obtained the estate in farm at the time of the loan, in the name of their dependants, and on security of one of their near relatives; and in the kubooleut, or counterpart of the lease, was a condition that the farmers were to pay the rent of the farm payable to the proprietors, borrowers of the loan, to the lenders, in liquidation of the bond debt; and that the appellants, the lenders, and in reality the farmers, had paid themselves. The lenders denied that they were the real farmers, though they admitted the profits, or rents, of the farm had been assigned to them, which however were never paid to them.

The principal sudder ameen was of opinion, that the lenders were the farmers under fictitious names of their dependants; and, as they admitted, and it was proved, that the rents had been assigned over to them in payment of the debt, they had no claim on the borrowers, the defendants; but they might sue the farmers in case they had not been paid according to the assignment. He therefore dismissed the suit.

JUDGMENT.

The appearance of the case induces a strong belief that the lenders were, in fact, the farmers of the estate of the borrowers, and had inserted the clause in the counterpart of the lease, (kubooleut,) which assigned the rents to themselves. Their pleader, Tarik Chunder, has however declared their readiness to deny, on solemn affirmation, any and all concern in the farm and payment of the rents assigned.

In the clause assigning over the rents to the lenders, it is provided that receipts shall be taken from them on payment of each instalment by the farmers and given to the proprietors. None of these are forthcoming.

It is clear therefore, that both parties are equally to blame; the lenders for remaining quiet without receiving payment of the rents; and the borrowers for not having required the proper receipts of the payments from the farmers.

Ordered, that the case be remanded, and the principal sudder ameen be directed to order the plaintiffs to include the farmers and their surety in the suit as defendants. He will then call upon them to file receipts and proofs of the payment of the rents, during the period they held in farm the estate of the borrowers, to the assignees, as agreed, or to the lessors. If to neither, then decree against them; otherwise, against either the assignees, or lessors, as may seem just and equitable.

THE 13TH JUNE 1846.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION No. 1018 OF 1844.

IN the matter of the petition of Kishen Lal Kutturyar Gyawal, filed in this Court, on the 2d December 1844, praying for the admission of a special appeal from the decision of Wm. St. Quintin,

additional judge of Behar, under date the 3rd September 1844, confirming that of Moolvee Mahomed Ibrahim, moonsiff of Gya, under date 27th February 1844, in the case of petitioner, plaintiff, *versus* Byjoo Koormee, defendant.

The petitioner sued, as adopted son of Chumput Kutturyar, to recover 54 rupees 15 annas 6 pie, due on a bond from Byjoo Koormee. The defendant did not appear; but Durshun Puharee and others, denying the right of the plaintiff to sue as heir of Chumput, put in several claims. The moonsiff and the judge threw out the plaint and refused to hear the plaintiff, until he had regularly proved himself to be the adopted son of Chumput. The Court direct that the case be sent back to the judge, with directions to instruct the moonsiff summarily to decide between the plaintiff and Durshun Puharee and others; and allow the successful party to proceed according to law. The value of the stamp, on which the petitions of appeal and special appeal are written, will be returned.

THE 13TH JUNE 1846.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 1068 OF 1844.

IN the matter of the petition of Gunga Pershad Ghose, filed in this Court on the 27th December 1844, praying for the admission of a special appeal from the decision of F. W. Russell, Esq., judge of zillah Hooghly, under date the 25th September 1844, affirming that of Rae Radha Govind Shome, principal sudder ameen of said zillah, under date 17th December 1842, in the case of Gunga Pershad Ghose, plaintiff, *versus* Ram Fotdar and others, defendants.

It is hereby certified, that the said application is granted on the following grounds.

This was a suit instituted under the provisions of Clause 8, Section 15, Regulation VII. 1799, for damages against the *ryots*, for opposing the plaintiff, and preventing him measuring his estate.

The plaintiff included under the head of damages the excess of rent that he would have been entitled to, had the measurement and consequent assessment been effected.

The principal sudder ameen threw out this part of the case, on the grounds that no demand of excess of rent could lie before the lands had been assessed, and due notice issued under Section 9, Regulation V. 1812, and consequently the plaintiff could not claim as damages, that which had no legal existence. His decision was affirmed by the judge.

The Court observe that the amount was claimed as damages and not as rent, and that to reject the claim without enquiry is to encourage the *ryots* in their resistance to the plaintiff in the exercise of the privileges vested in him by law, and that no notice can be issued under Section 9, Regulation V. 1812, until the amount rent has been ascertained, and that the present action was brought precisely because the defendants would not allow the plaintiff to pursue the only course by which the amount rent could be ascertained, (for he, the plaintiff, was a purchaser at public sale and had no accounts whatever to refer to.) Under these circumstances, the Court admit the special appeal, and direct that the proceedings be remanded to the principal sudder ameen, who will depute an ameen to ascertain the rents of the estate, and award to the plaintiff such amount of damages as may appear right and proper.

THE 13TH JUNE 1846.

PRESENT:

C. TUCKER and
J. F. M. REID,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

PETITION No. 1081 OF 1844.

IN the matter of the petition of Tarapersaud Paul, filed in this Court on the 31st December 1844, praying for the admission of a special appeal from the decision of the judge of Midnapore, under date the 24th September 1844, affirming that of the principal sudder ameen, under date 18th April 1844, in the case of Tarapersaud Bhooeea, plaintiff, *versus* petitioner and others, defendants.

It is hereby certified, that the said application is granted on the following grounds.

Plaintiff sued Sooroop Narain Soor, Lukheenarain Soor, and others, and also Gooroopersaud Jana, who held a decree against them, on the 1st April 1843, for possession of certain lands at a

jumma of 247 rupees, 7 annas, mortgaged on the 12th Chyte 1844, to plaintiff by Bulram Soor, Anund Soor, and Benode Lal Soor, for 650 rupees, after having applied for and procured an order for foreclosure under provisions of Regulation XVII. of 1806. Plaintiff was about to sue regularly for possession, when Gooroopersaud Jana, decreedar, attached the lands now under litigation, in satisfaction of his decree. Plaintiff protested, the lands were released by the principal sudder ameen on production of his mortgage bond and evidence. Gooroopersaud appealed to the judge, who ordered the sale to be made with reservation of the mortgagee's rights, under Circular Order 4th September 1840. The sale took place, and the petitioner was, in consequence, on the 27th June 1843, included amongst the defendants, he having purchased the mortgaged lands at the sale; date not given.

Sooroop Nurain, and the other mortgagers, in answer, admitted the mortgage and the foreclosure.

Gooroopersaud, the decreedar, in answer, urged, he ought not to have been sued, and was not responsible to the plaintiff.

Tarapersaud Paul, the petitioner, in answer, stated, the plaintiff and the mortgagers were in collusion, and that he was entitled to the land, having purchased them at sale in execution of decree against the alleged mortgagers.

The principal sudder ameen decreed for the plaintiff. The question to be tried he declared to be the genuineness of the mortgage-bond. The mortgagers admitted the bond; and *copies* of the depositions of the witnesses produced in support of plaintiff's protest, above referred, as well as other documents, proved plaintiff's claim. Defendant, Tarapersaud Paul, having produced no satisfactory document, in proof of his allegation, that the parties were in collusion, his plea was rejected; and as the rights of the mortgagers were extinct before the sale, the sale-purchaser, Tarapersaud, petitioner, he declared, had no claim whatever. He was however not charged with costs, which were made payable by the other defendants.

The judge upheld the above decree, as the mortgagers had no right in the land, and consequently the sale-purchaser had none.

An application was made, on the 31st December 1844, for admission of special appeal against this last order,

By the Court.

It does not appear on the record that the petitioner was called on to prove the pleas he urged in answer, as prescribed by Section 10, Regulation XXVI. 1814. The Court therefore direct that the application for special appeal be admitted. The case must be brought on the court's file, and returned to the principal sudder ameen, with instructions to require from the petitioner any proof, documentary or oral, he may have to produce in support of his allegation that the plaintiff and the mortgagers are in collusion.

THE 17TH JUNE 1846.
PRESENT:
C. TUCKER and
J. F. M. REID,
JUDGES,
and
W. JACKSON,
OFFG. TEMPY. JUDGE.

CASE No. 103 OF 1839.

MR. J. P. WISE, (PLAINTIFF,) APPELLANT,
versus
RAJ KISHEN CHUCKERBUTTY, (DEFENDANT,) RESPONDENT.

THE plaintiff instituted a suit in the zillah court of Tipperah, on the 8th February 1837, or 28th Magh 1243 B. S., to recover from the defendant, as heir of Buwani Churn Chuckerbutty, the sum of Sicca rupees 5,650, or Company's rupees 6,026-10 anas, being the principal and interest of an instalment bond executed by Buwani Churn, on the 2d Kartic 1231, in the name of Shewa Ram, a servant of Kalee Doss Rai, for the sum of Sicca rupees 2825, due to the latter on an adjustment of accounts, payable by instalments as per margin,* which bond had, after the demise of Kalee Dass Rai in 1233, been sold to the plaintiff by his widow Birj-ishoree, on the 19th Bysack 1242.

* In Magh 1231,	Sa. Rs.	1300
„ Sawun 1232,	„	500
„ Magh 1232,	„	500
„ Sawun 1233,	„	525
	Sa. Rs.	2825

The defendant denied that he was heir of Buwani Churn, and pleaded the rule of limitation,—more than 12 years having elapsed between the date of the bond and institution of the suit, and the Court's Circular Order of the 29th July 1809, which prohibits the institution of suits under fictitious names,—as bars to the present action.

Moulvy Abool Khyr Mohummud Ali, the principal sudder ameen of zillah Tipperah, dismissed the plaintiff's claim on the following grounds: 1st, that it was barred by the rule of limitation, because more than 12 years had elapsed between the date of the bond and the date of the institution of the suit, there being no proof of payment of any portion of the debt within that period; 2d, because the bond was in favor of Shewa Ram, for whose debt it purported to have been executed; and 3d, because it was not proved that defendant was heir of Buwani Churn, and responsible for his debts.

The plaintiff appealing to this Court, the case was taken up by Mr. A. Dick, who, on the 19th May 1842, proposed to nonsuit the plaintiff according to the precedent of the case of 'Umdut-un-nissa and others, appellants, *versus* Sheikh Umud-ud-deen', decided by Messrs. Walpole and Braddon, on the 22d July 1833, (see page 314, vol. V. of Select Reports,) and the Circular Order of the 29th July 1809; for he held, that, as a man could not sue in the name of another, he could not sue on a bond executed in the name of another.

The case having been taken up by Mr. Barlow, he, on the 2d April 1846, recorded his opinion in favor of the plaintiff's claim, on the following grounds:

"In my opinion neither the Circular Order, nor the precedent cited, apply to this case; for they relate to a fictitious person (shuks-i-furzi) that is a person who, being the real owner, does not sue in his own name, but in the name of a fictitious person. That certainly would not be allowed. In this case the plaintiff, calling himself the purchaser of the rights of the real owner, sues in his own name, stating the bond to be in Shewa Ram's name. I therefore hold the claim to be cognizable by the Court.

"I do not think the rule of limitation applies; for the period of 12 years should be reckoned from the date on which the debt became due: not from that in which the bond was written. The bond was written on 2d Kartick 1231, and the time allowed for the payment of the first instalment, i. e. 1300 rupees, must be reckoned from the end of the month of Magh 1231: the plaint was filed on 28th Magh 1243, which is two days within 12 years. The rule of limitation therefore does not apply.

"The bond and evidence of the witnesses fully prove the lending the money and execution of the bond. The defendant merely denies.

"The roobucarrees of the magistrate and collector, dated 2d August 1825 and 18th January 1833, prove that defendant acknowledged in the fouzdaree court that he was heir of Buwani Churn, and received out of the collector's office some surplus money, while the plaintiff's witnesses prove the fact. The evidence, therefore, of the defendant's witnesses, in support of his denial of heirship and possession of the property left by Buwani Churn, is not sufficient to rebut the evidence produced by the plaintiff."

He therefore ordered that the papers should be laid before a third Judge, in order that the appeal and claim should be decreed, and the decision of the principal sudder ameen reversed with costs.

The case next came before Mr. Reid, who concurred with Mr. Barlow, that the cognizance of the suit was not barred by the Circular Order and precedent above cited, and that the rule of limitation did not apply, as the suit had been brought within 12 years

from the date on which the first instalment of the bond became due. Observing, however, that the plaintiff had adduced no proof of the transfer of the instalment bond from Musst. Birj-ishoree to himself, he directed that the case should be brought before a full court.

By the Court.

The plaintiff claims under a bond executed in favor of Sheo Ram. Evidence is adduced to prove that the real lender of the money was Kalee Doss, since deceased, and that Sheo Ram was his servant; and a person calling himself Ramkunhye has filed a petition in this Court, stating that he is heir of Sheo Ram, and acknowledging that he has no claim under the bond, the real lender being Kalee Doss.

It therefore becomes incumbent on plaintiff to prove the sale or transfer of the bond to him by the widow of Kalee Doss, but no proof of this description is to be found. The plaintiff pleads that this point was not questioned by the defendant, and that it was therefore unnecessary to offer proof to it. It appears, however, that the defendant generally denied the claim of plaintiff, and it was therefore incumbent on plaintiff to adduce proof of his claim, which rests entirely on the transfer. The Court are of opinion that the neglect of the plaintiff to prove his own title to benefit by the bond under which he sues, is fatal to his claim;—the Court further observe that the suit was not instituted for above 12 years after the execution of the bond; and in the absence of the heirs of the deceased Kalee Doss, in whose favor the bond is proved to have been executed, it was especially necessary that the plaintiff's title to benefit by the bond should be made clear: in this most important point he has entirely failed. Under these circumstances the Court dismiss the claim of plaintiff, confirming the decision of the principal sudder ameen;—the costs of both courts against the plaintiff.

THE 17TH JUNE 1846.

PRESENT:

A. DICK,

JUDGE.

CASE No. 54 OF 1844.

Regular Appeal from the decision of Moolvee Abdool Alee, Principal Sudder Ameen of zillah Rajshahee.

SHUREEUT OOLA CHOUDREE AND KUREEM BUKHSH,
APPELLANTS, (DEFENDANTS,)

versus

GUNGA PERSHAD SOOKUL, CHIMUN LALL, AND OTHERS,
RESPONDENTS, (PLAINTIFFS.)

Pleaders—Ram Pran and Bunsee Budun for Appellants, and Pursun Koomar and Mr. Waller for Respondents.

SUIT laid at Company's rupees 24,054, 14 annas, 0 pie, for possession on a zumeendaree Deehee Chatnee, with usufruct.

The estate in question was mortgaged to the respondents by the appellants. When the period for redemption had elapsed, the mortgagees caused the notice under Regulation XVII. 1806, to be issued on the mortgagors. The year for redemption having elapsed, the mortgage became foreclosed. Within two years from that date, the present suit was instituted. The loan on the mortgage was made by three persons in different shares; and after the mortgage was foreclosed, one of them named Gunga Munee sold her share to one of the plaintiffs, Doorgapershad.

The defendants pleaded principally that the claim was founded in fraud; that the mortgage in question had been cancelled by the defendants having given another mortgage to plaintiffs, who kept the deeds until the new deeds could be registered; that the new deeds were deposited in trust with Chimun Lal, plaintiff, who was not a party to it, on account of his highly trustworthy character, and his being a respectable banker; and prayed that his deposition be taken on oath, by which they were willing to abide. The defendants had nothing to produce to establish their defence, except the evidence of a number of witnesses and some notes from the mortgagees, stating their readiness to renew the mortgage. Disbelieving these, the principal sudder ameen decreed the suit.

In appeal, the appellants' pleaders urged, in addition to the defence in the zillah, that the case ought to have been nonsuited; 1st, because Gunga Munee could not sell what she had not in possession; and 2nd, because in the mortgage deed was included an indigo factory, the value of which ought to have been added to the

amount of the suit. The widows too of the appellants petitioned to appear as objectors to the claim of respondent.

JUDGMENT.

The appellants have been unable to produce any documentary proof to establish their plea of the renewal of the mortgage. The respondents did not sue for two years after the alleged renewal. If it had occurred, and the respondents had delayed having the deeds registered, why did the appellants remain quiet so long? Their conduct from first to last is altogether unaccountable and unworthy of belief. The property they say was worth double the mortgage money, and they could have got it from another party; but were induced by respondents to let the mortgage continue. The mortgagees then cause to be issued the notice for redemption, evincing their determination to foreclose; still the mortgagors remain inactive. It is foreclosed and a renewal of it made, and it annulled; yet the old and new deeds are left in the hands of the mortgagees till the latter are registered. The latter are not registered; still the mortgagors continue silent and inactive for two years, until the mortgagees sue for possession. Such a plea cannot be admitted for a moment. The other two pleas are also invalid. The sale of Gunga Munee was perfectly legal, both parties being Hindoos; and the other plea was not urged in the answer, and therefore is inadmissible.

Appeal dismissed with full costs. The petition of the appellants' wives to appear as objectors rejected. They should have appeared in the zillah.

THE 18TH JUNE 1846.

PRESENT:

R. H. RATTRAY,
JUDGE.

CASE No. 370 OF 1845.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Bhagulpore, Mohummud Majid Khan, August 30th, 1845.

GOUR BUKHSH SINGH, *alias* SUDDEN LAL, APPELLANT, (DEFENDANT,),

versus

SHAH SUKHAWUT HOSEIN AND FUZEELUT HOSEIN, RESPONDENTS, (PLAINTIFFS.)

Wukeel of Appellant—Aftabodeen.
Wukeel of Respondents—Ameer Ali.

THIS suit was instituted by respondents on the 4th of October, 1844, corresponding with the 20th of Asin 1252 Fuslee, to recover

from appellant the sum of Company's rupees 5,283-5-4, principal and interest, the amount of two bonds.

The bonds were proved to have been executed, and their amount to have been acknowledged to be due, by appellant, by the testimony of several witnesses; but objection was urged to the claim of respondents, on the ground of the case not being cognizable under the statute of limitation: inasmuch as the first of the two bonds bore date the 10th Phagun 1239 F., thirteen years before the action was brought; and the second, being claimed conjointly with it became vitiated by the connexion, and required an independent suit to enforce it.

The principal sudder ameen overruled the objection noted, with reference to the debt exhibited on the first bond having been acknowledged, with promise of payment, in the second; and upon the evidence which established respondents' right to all they sought to obtain, passed a decree in their (respondents') favor.

In appeal the same line of defence was taken; but beyond the argument contained in his answer and petition of appeal, nothing has been advanced or exhibited by appellant, in the way of evidence, in either court; and adverting to Section 14, Reg. III. of 1793, which is directly in point and confirms the correctness of the view taken by the principal sudder ameen of the question raised, the decree of that officer must necessarily be affirmed. It is affirmed accordingly, on the grounds on which it was passed, with all costs payable by appellant.

THE 20TH JUNE 1846.

PRESENT:

J. F. M. REID,
JUDGE.

PETITION NO. 142 OF 1845.

IN the matter of the petition of Moost. Nurainee Dossee, filed in this Court on the 26th March 1845, through Kishen Kishwur Ghose, pleader, praying for the admission of a special appeal from the decision of Syud Abas Ali, principal sudder ameen of Sylhet, under date the 24th December 1844, confirming that of Goluknath Rae, acting moonsiff of Ajmereegunge, under date 22d April 1844, in the case of Nurainee Dossee, plaintiff, *versus* Birj Kishwur Deb and others, defendants.

The case was remanded for retrial on the following grounds,

The plaintiff sued, as widow of the late Surbanund Deb, to set aside the auction sale, in execution of a decree of ⅓d of a 3 anna 10 gunda share of a talook in pergunnah Buneachung, called Joafilgura Mulook Chand, registered in the collector's books, as No. 10, brought to sale by Birj Kishore Deb and Raj Kishore Deb, decree-holders against Moost. Rebutee, Moost. Sidhisree, and Moost. Muhishree, widows respectively of Mulook Chand, Deb Chand, and Kirtee Chand, and purchased by them (the decree-holders.) She states that her husband and his brothers, Lall Chund Deb, and Suntose Deb, were proprietors of the whole talook, 4½ annas, under a decree of the register, dated 10th December 1814, and 11½ annas, under a *ladavee*, executed in their favor, by Mulook Chand and others. Lal Chand Deb had instituted a suit against the same defendant to set aside the sale of his ⅓d share; his suit was dismissed by the then moonsiff, who did not consider the *ladavee* proved. The judge, in appeal from that decision, rejected Lal Chand's claim, on grounds quite irrespective of that document. The acting moonsiff dismissed the present case on the sole ground of the former rejection of the said *ladavee*, and the principal sudder ameen confirmed his decision. As the plaintiff was not a party to the suit brought by Lal Chand Deb, she is not bound by the decision thereof, nor barred from her right to prove her title to the property claimed. The special appeal is therefore admitted, and it is ordered that the decisions of the acting moonsiff and principal sudder ameen be quashed, and that the case be replaced on the moonsiff's file to be tried on its merits. The value of the stampt papers, on which the petition of appeal and application for special appeal are written, will be returned as usual.

THE 22D JUNE 1846.

PRESENT:

R. H. RATTRAY and
C. TUCKER,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 55 OF 1845.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Behar, Hedâyut Ali Khan, December 23rd, 1844.

MUSST. MOTEE SOONDREE DASEE, (WIDOW OF RAEE RUSEEK LAL MITR,) APPELLANT, (PLAINTIFF,)

versus

MEER KUBEER HOSEIN AND MEER MOHUMMUD HOSEIN, RESPONDENTS, (DEFENDANTS.)

Wukeels of Appellant—J. G. Waller, and Rdee Sreenath Sein.

Wukeels of Respondents—Hamid Russool, Aman Ali Khan, Aftabodeen, and Buhadur Ali.

THIS suit was instituted by appellant on the 8th September, 1843, to recover from respondents the sum of Company's rupees 18,786-5-10, being a balance of rent due for the Fuslee year 1249, on talook Malee-dalee, situated in purgunnah Kutumber, and other lands.

The plaint is, in substance, as follows.—The defendant (respondent) Meer Kubeer Hosein, took certain lands in farm from the plaintiff (appellant) from 1249 to 1255 Fuslee, at an annual rent of Sicca rupees 55,001; and the usual *pottah* and *kubooleeut,* made out in the name of Meer Mohummed Hosein, his son, were interchanged, and possession given. The rent in Company's rupees, was 58,667-15-9; of which for 1249 Fuslee they paid 41,894-3-2; leaving a balance due of 16,773-13-3. In Asin 1250 Fuslee, defendants relinquished their lease, agreeing to pay this balance on an adjustment of accounts; and, further, undertook the future collections of the estate for plaintiff. They remained in charge during the whole of 1250; and embezzled the rents to a large amount. Notwithstanding the repeated calls made to them for payment of the balance of 1249, they have persisted in withholding it; and therefore it is now sued for, to be paid with interest.

The answer is, that the claim preferred is utterly false; that, before the suit was instituted, an adjustment of accounts had taken

place, by which a balance in favor of defendants was shown, to the extent of 17,000 rupees; that defendants then tendered their resignation by a petition, stating the above sum to be due to them, and that the real rent was only 45,000 rupees,—55,000 having been entered merely to mislead Birj Opadya, a Muhajun, who had proposed to take the farm, at 45,000, of the muhals in Behar, exclusive of those in Patna, of which, in consequence of obstacles on the part of plaintiff herself, defendants could not obtain possession. After perusing this petition, the lady (plaintiff) wrote on the back of it, on the 1st Asin 1250 Fuslee, as follows: 'It is ordered, that a receipt in full for the rent of 1249 F. be recorded on the back of the *kubooleeut*, which will then be returned to the farmers, that a fresh *pottah* be granted at 45,000 rupees, and a *kubooleeut* corresponding with it taken from them (the farmers) from 1250 F., and that the 17,000 rupees due to them be carried to their credit in the rent account of 1250-1252 F.' This was done accordingly, and the *kubooleeut* was returned to defendants under the seal and signature of the lady herself. In proof of what is stated, defendants have a copy of the petition of resignation, with the order recorded on the back, both in the hand-writing of Hur Chunder Sen, moonshee of the lady's *surishteh*, besides the original *kubooleeut* returned; and, in further evidence, there is the petition of Tyub-ul Toheed, the *mookhtar* of the lady, dated March 21st 1843, presented in the collector's office. Such being the case, what becomes of the claim for a balance of rent for 1249 F? What plaintiff states in regard to defendants making the collections for her after their (defendants') resignation, is altogether false; and urged only to defraud them of the 17,000 rupees, for which credit was to be given under the new lease extending to 1253 Fuslee.

Plaintiff, in her reply, denies the whole of the statement asserting the existence of a balance in favor of defendants of 17,000 rupees for 1249 Fuslee, on an adjustment of accounts before this suit was instituted; as well as the pretended understanding on which the lease was given. Had any adjustment taken place, defendants would have received a regular receipt, signed by her (plaintiff) in full of all demands for the year; and if they had this, they would have said so in their answer. Moreover, if the adjustment took place, why did Meer Kubeer Hosein solicit the interference, as it will be proved he did, of numerous respectable persons, to procure the adjustment of those very accounts; and if any balance had really been due to defendants, would they not have required some sort of acknowledgment in the way of security? The fact is, defendants never presented any petition of resignation; how then could plaintiff have written the order said to have been written upon it? The true version of the matter, is this: On defendants' relinquishing the lease in Asin 1250, plaintiff objected that the adjustment and payment of the balance of 1249, had not been made;

upon which Kubeer Hosein (on the 1st Asin 1250) wrote a letter, with his own hand, to Mirtunjye Bose, plaintiff's father, the purport of which was, that he would adjust and pay what was due as soon as the accounts should be delivered in by the former: upon this, the *kubooleut* was returned, with a memorandum upon it, to the effect, only, that the relinquishment was agreed to: in the same way the *pottah* was returned by defendants, with an endorsement of their resignation and relinquishment of the profits for the years of the lease still unexpired. But, further, Meer Kubeer Hosein, for her satisfaction, gave plaintiff an *ikrar* (acknowledgment) on stampt paper, dated 8th Asin 1250 F., (27th September 1842,) setting forth that he had resigned the farm with the consent of his son Mohummud Hosein, and engaging to pay what should appear to be due after an examination of the farm accounts. Plaintiff has denied that defendants ever presented a petition tendering their resignation: how then could Hurchunder Sen give them a copy of it? This Hurchunder Sen has been discharged from plaintiff's service; and if, in revenge, he has written any thing prejudicial to her, it does not follow that it is true; and again, if defendants got a new lease at 45,000 rupees, where is their *pottah* for it? and how came Mohummud Hosein, under a *mokhtarnameh* (power of attorney) from plaintiff, dated 7th October 1842, to assume the management of the estate, for his embezzlement in the exercise of which she dismissed him? and why, on that occasion, did he make over all the *mofussil* papers to her agent Parbuttee Churn Chukurwurtee? Moreover, if the alleged order of the 1st Asin 1250, on defendants' pretended petition resigning their lease, were really true, and had been carried out, how came Mohummud Hosein, in *Poos* and *Mâgh* of the same year, to send all the *mofussil* settlements for plaintiff's sanction; which were returned to him, with orders, upon each respectively, written by Hur Chunder Sen and signed by Motee Soondree (appellant)? In proof that all this was as represented, the accounts bearing Mohummud Hosein's signature and a copy of the *mookhtarnameh* are forthcoming. It is presumable from this, that the asserted deed of resignation is a forgery. On the 23rd June 1843, Mohummud Hossein, in a petition presented to the magistrate, admits being Motee Soondree's agent, having resigned the farm; which is in direct opposition to what his father (Kubeer Hosein) states, in respect to the order of the 1st Asin 1250, on his alleged petition of resignation. In regard to the petition said to have been presented to the collector by plaintiff's agent Tyub-ul-Toheed, and which, defendants think, supports their case, the facts are as follows. Plaintiff had such confidence in defendants, that, at the request of Mohummud Kubeer, she lent him the cancelled *pottah*, which he required to file in a suit before the collector, and which he did file through this person Tyub-ul-Toheed; but though returned to him

by the latter, he never restored it to plaintiff. This man, Tyub-ul-Toheed, was appointed to his situation by defendants; and if at their instigation he filed what was inimical to plaintiff's interests to serve theirs, where is the wonder? but a petition presented without her knowledge or sanction, will not be allowed to prejudice her rights. Had there been any truth in the story told by defendants about the real rent being only 45,000 rupees, while the *pottah* and *kubooleut* exhibited it at 55,000; is it to be supposed that they would have remained satisfied without some written document from plaintiff shewing the true nature of their engagement? What they say to plaintiff's assertion of having their *kubooleut* in her possession, will avail them nothing: it may apply to the original or a copy: the expression was used solely to establish what the rent really was. There is no occasion for any distinct notice of defendants' denial of having undertaken the management of the estate as agent, or of their averment of this suit having been brought merely to evade payment of the surplus 17,000 rupees due to them. What has been set forth above is quite sufficient to disprove both. Defendants rely upon certain accounts, orders, and letters (as detailed,) to prove the payment of the rent of 1249 F. But this is folly on their part; they will avail them nothing: credit has been given them for every payment.

In their rejoinder, defendants observe that the suit is founded on the *kubooleut;* that plaintiff, feeling the truth of what they had stated in regard to their resignation, clearly admits, in her reply, the having returned the *kubooleut* to them, with a record endorsed upon it of the payment in full of the rent for 1249: she denies the delivery of the petition of resignation in direct opposition of what she herself says in her plaint: in which, too, she states, that she has in her possession the *kubooleut* on which the action rests. In consequence of the truth which pervades defendant's answer, she, in her reply, falsifies all she set out with, and takes a new ground evidently untenable, if only from its omission in the plaint, in which there is no mention of it. It is clear from that reply, that the object of plaintiff is to get rid of the excess due to defendants of 17,000 rupees, as shown in their answer, and the renewal of the lease at 45,000 rupees with its profits. At first—in her plaint, that is—plaintiff avowedly admits the resignation of the farm: in her reply, she denies it. But, as the deed of resignation was written by Hurchunder, plaintiff's servant, who retained his situation till after defendant's answer was filed (as proved by papers written with his own hand,) therefore, in her reply, she states his having been recently dismissed: thus, by implication, admitting that the copy of the deed was, in truth, written by him. There remains then no doubt, under plaintiff's own showing in her plaint and reply that defendants did give in a deed of resignation, on which the order recorded, as well as the copy of the deed itself, was in the hand-

writing of Hurchunder. The mention of the *rooka* (letter) and *ikrarnameh* (deed of acknowledgment) in plaintiff's reply, is altogether opposed to what is stated in the plaint, as well as to papers filed in the criminal court; and they are forgeries. Had they been true, they would have been mentioned both in the plaint and in the petition presented in the foujdaree case regarding possession. Finally, these documents—this *rooka* and *ikrarnameh*—contradict each other. The *rooka* is made to bear date the 1st Asin 1250, while the acknowledgment on the back of the *kubooleut*, for the rent of 1249 in full, is dated the same: each virtually falsifying the other.

The principal sudder ameen dismissed the claim: but the Court are unanimously of opinion that such decision is faulty and cannot be upheld. The respondents admitted that the *kubooleut* executed by them was for Sicca rupees 55,001 (Company's rupees 58,667-15-9,) whilst they adduced no evidence whatever, documentary or oral, to establish the fact urged in their answer, that the real jumma (rent) was 45,000 rupees only. The assertion by respondents, that appellant, on returning their *kubooleut*, had acknowledged on the back of it the receipt in full of the rents for 1249 F. is denied by the latter. The Court do find an acknowledgment to that effect on the reverse side of the *kubooleut*, but under extremely suspicious circumstances; and being denied by appellant, it was incumbent on respondents to prove the same to have been recorded with her sanction. It was obviously a matter of no difficulty for them to insert what they pleased, in the manner shewn, on the returned *kubooleut*; and the failure to prove the genuineness of this endorsement, might of itself be deemed conclusive as to appellant's claim, inasmuch as they plead payment only of the *jumma* they alleged to have been agreed upon, rupees 45,000, that is; whilst the real jumma was 55,001. The assertions of respondents, that they hold a copy of the written resignation tendered by them to appellant, in which all these circumstances are recorded, transcribed by one Hurchunder, a servant in the employ of appellant, and also of a petition presented to the collector by another servant of appellant, Tyub-ul-Toheed, in which the receipt of the full rent for 1249 F. is acknowledged, are assertions only—unsupported by a tittle of evidence. Respondents have not produced the copy of the alleged deed of resignation in the hand-writing of Hurchunder, but merely a pretended transcript by another hand; nor has Hurchunder been called to prove the fact they plead. In like manner, Tyub-ul-Toheed has not been cited in support of the petition said to have been presented by him to the collector on the part of his principal, the appellant. In short, respondents have not cited a single witness; so that their pleas against the claim of appellant are reduced to mere unsupported assertions. Besides, appellant has put in the original *ikrar*, dated the 8th Asin 1250, bearing the signature of

Kubeer Hosein, agreeing to pay whatever balance of rent might be due to appellant on an adjustment of the accounts, which had not been prepared. This has been proved to be what it professes to be, by witnesses to it; and satisfactorily shows that the receipt on the back of the *kubooleut* is a gross forgery. Under these circumstances, we decree for appellant with interest, and all costs payable by respondents; reversing the decision of the principal sudder ameen.

THE 22ND JUNE 1846.

PRESENT:

A. DICK,

JUDGE.

CASE NO. 86 OF 1844.

Special Appeal from the decision of the Principal Sudder Ameen of Hooghly, Moulvee Mynooddeen Sufdur; in Appeal from the Sudder Ameen, Hur Chundur Ghose.

MAJDAH BEEBEE, APPELLANT, (DEFENDANT,)

versus

SEIUD KULUNDUR BUKHSH, RESPONDENT, (PLAINTIFF,) DEFAULTING.

Pleader—Neel Munee Bunoorjeeah for Appellant.

SUIT laid at rupees 776, 14 annas, 1 g., 6 c., for possession on certain lands, tanks, &c., hereditary.

The suit was decreed in favor of respondent in both the lower courts, against the appellant and other defendants. She alone preferred a special appeal. It was admitted by Mr. Tucker, Judge, first to try the propriety, or otherwise, of admitting the suit, instituted after a lapse of 22 years from its cause; and then, if admissible, to enter fully into the merits.

It appears on perusal of the record, that the respondent merely set forth his absence at Madras in official employ, as his reason for not having sued sooner. Both the courts below, without further inquiry, decreed the whole of the claim, simply on the assertion of the plaintiff; because of the admission of a part of it by the defendant.

The plaintiff should have been required to prove, that from good and sufficient cause he had been precluded from obtaining redress under Regulation III. 1793, Section 14: his mere absence at Madras was manifestly not such a cause, or he should have proved unjust and dishonest acquisition, under Clause 2, Section 3, Regulation II. 1805.

The Court observe, that the appellant denied the respondent's right to a certain portion of his claim ; and adduced a decree in her favor of many years back, in corroboration of her exclusive right to it. The proof was certainly not conclusive against respondent's right, since the appellant was unable to file the deed of purchase, as alleged by herself. But on the other hand, the respondent did not prove his allegation of the purchase by him from whom he claimed as heir, and no proof was demanded from him. As appellant had produced proof of possession beyond 12 years, her right was unimpeachable; except on proof of unjust and dishonest acquisition. The case is remanded for the judge to place it on his own file, and proceed and decide as above indicated.

THE 23D JUNE 1846.

PRESENT:

A DICK,

JUDGE.

CASE No. 277 OF 1843.

Regular Appeal from the decision of the Additional Principal Sudder Ameen, Mynooddeen Sufdur, of Zillah Hooghly.

ANUNT RAM BOSE, APPELLANT, (DEFENDANT,)

versus

RAM NARAIN MOKERJEEAH, FOR HIMSELF AND ATTORNEY FOR DEENANATH MOKERJEEAH, AND JUDOONATH MOKERJEEAH, &C. &C., RESPONDENTS, (PLAINTIFFS.)

Pleaders—Ubas Alee for Appellant, and Ghoolam Sufdur for Respondents.

SUIT laid at 5,500 Company's rupees, to cancel a public sale made in execution of a decree of court.

The appellant lent the sum of 3,000 rupees to certain *putneedars*, in whose *putnee* the villages in dispute were situated, on a *kutkubalah*, or conditional sale deed, pledging to him 334 biggahs, 18 cottahs, 11 chittacks, within a specified boundary, within the two said villages, dated 31st Bysack 1233 B. E.

The respondents, on the 12th Asin 1233 B. E., lent the same *putneedars* 51,000 rupees, also on *kutkubalah* pledging to them the whole of the *putnee* tenure, including both the above villages. The appellant, on the 25th May 1830 A. D., sued for payment of his loan with interest: no defence was made, and he obtained a decree on the 20th December 1830 A. D. The appellant, though he mentioned the mortgage, did not sue for it, but only for the money due. The respondents, at the expiration of the period for

payment of their loan, caused notice to be issued on the *putneedars* to pay up, under Regulation XVII. 1806. The *putneedars* failed to pay up, and the mortgage foreclosed at the expiration of the year; and on the 11th September 1830 A. D., the mortgagees instituted their suit for possession; and eventually they got a decree from the Sudder Court for possession on 12 anas of the putnee, if the money due to them was not paid up within 6 months from the date of the decree. While that suit was pending in appeal before the Sudder Court, the appellant came forward as a third party, and claimed prior lien on the two villages, now in dispute. The Sudder Court, without calling for the *kutkubalah*, or mortgage deed of the petitioner, ordered that the two villages should be sold in satisfaction of his decree. The villages were sold, and purchased by the petitioner himself, the appellant. The respondents had in the mean time obtained possession of the whole of the 12 anas of the *putnee*, and, on this sale being made, were ousted from those two villages; to which they objected, but it was ruled summarily by the respective courts, that, under the order of the Sudder Court in favor of the appellant, above alluded to, they must be dispossessed. In consequence, they instituted this suit to recover possession, excepting that portion, 334 biggahs, 18 cottahs, 11 chittacks, which had been pledged to appellant previous to their mortgage.

The additional principal sudder ameen, deeming their claim just, decreed in their favor.

The appellant appealed, contending that the order of the Sudder Court, having been given in a regular suit finally decided by them, was not open to question; and therefore respondents should have been nonsuited; 2dly, that their decree was for money, and not for possession on the land mortgaged, and therefore the Sudder Court had ordered that if the decree were not satisfied from the sale of these two villages, any other part of the *putnee* which might remain to the *putneedars* should be sold to satisfy it.

JUDGMENT.

There are two points for decision:—1st. Is the order of the Sudder Court open to question, and liable to annulment on a regular suit? 2d. Was the order correct or not? The appellant, in whose favor that order was passed, was not a party to the original suit. The order therefore was interlocutory, merely summary, and passed even without calling for the document on which it was founded. That it was erroneous cannot be disputed. A portion of the two villages had been mortgaged to the appellant; and at the time he got his decree for the money due to him, the remainder of the two villages had virtually become the property of the respondents by foreclosure of their mortgage, and they had actually instituted a suit for possession. Therefore the appeal is dismissed with full costs.

THE 24TH JUNE 1846.

PRESENT:

J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 242 OF 1843.

A Regular Appeal from the decision of the Principal Sudder Ameen of Hooghly.

ANUND CHUNDER SEIN, (PLAINTIFF,) APPELLANT,

versus

GOKUL KISHEN GHOSE, HURISH CHUNDER MOKERJEE, AND SOORUJ KOOMAR SEIN, (DEFENDANTS,) RESPONDENTS.

Pleaders of Appellant—Gholam Sufdur and Nilmoney Bonerjee—of Respondents, Purshun Koomar Tagore Raee Behadur, Rajnarain Dutt, Bunsee Buddun Mitter, Sreeram Roy, and Nussimooddeen.

ANUND Chunder Sein, independent talookdar of Jhoomjoomee, in the 24 Pergunnahs, sued Gokul Kishen Ghose, independent *talookdar* of Doolubhpoor, in zillah Hooghly, and Hurish Chunder Mokerjee and Sooruj Koomar Sein, in the zillah court of Hooghly, on the 7th September 1842, to obtain possession of three *paras*, Deeheepara, Taldapara, and Nij Goodar Talda, under the following circumstances, stated in the plaint.

Lot Doolubhpoor, a *kharijeh talook* of pergunnah Mundul Ghaut, was purchased by Ram Doolal Misser, who paid into the Burdwan collectorship the sudder jumma 13,389 rupees up to 1221 B. S. In 1222 B. S. it was, by an order of council, divided into two mehals —talook Doolubhpoor, assessed with a jumma of 5033 rupees, remaining annexed to Burdwan till 1226, when it was transferred to Hooghly; and lot Jhoomjoomee, which, with a jumma of 8356 rupees, was transferred to the 24-Pergunnahs. Both mehals were held by Ram Doolal Misser and his heirs, who paid the Government revenue till, on the 31st Sawun 1241 (14th August 1834,) lot Jhoomjoomee was sold by public auction for the arrears of 1240 B. S., and purchased by Hurish Chunder Mokerjee, who on 24th Sawun 1242 (8th August 1835) sold it to plaintiff and Sooruj Koomar Sein. The latter on 18th Sawun 1243 (1st August 1836)

sold his moiety to the plaintiff, who is proprietor of the whole of lot Jhoomjoomee.

Lot Doolubhpoor was, in like manner, sold at public auction on 16th Assar 1242 B. S., and purchased by Gokul Kishen Ghose. That person obtained possession, by order of the judge of Hooghly, dated 20th January 1836, of the three *paras* in question. Hurish Chunder Mokerjee, objecting, was referred to a regular suit. The plaintiff, having succeeded to his rights, claims the *paras* as forming part of mouzeh Ajoodya-goodar-talda, which consists of nine *paras*; and brought the suit to obtain possession, laying his suit (there being no specific jumma fixed on each *para*) at three times the sudder jumma of the whole nine *paras*, Sicca rupees 2831 or Company's rupees 3019-11-9 × 3 = Company's rupees 9059-3-3, and mesne profits from 1242 to 1248, Company's rupees 14,045-14-0; total Company's rupees 23,105-1-3. Hurish Chunder Mokerjee and Sooruj Koomar Sein were by a supplementary plaint made defendants, and the suit laid at the estimated selling price of the *paras* in question, Company's rupees 10,500, and mesne profits as before 14,045-14-0, total 24,545-14-0.

Gokul Kishen Ghose claimed the *paras* in question as belonging to lot Doolubhpoor, situate in thanehs Pandooa and Bhagnan, in zillah Hooghly, which is divided from lot Jhoomjoomee in thanehs Oolooburia and Kotra, in the district of the 24-Pergunnahs, by a *khal*, or creek, which forms the boundary of the two districts.

Hurish Chunder Mokerjee and Sooruj Koomar Sein, it may here be mentioned, corroborated the assertion of the plaintiff.

The principal sudder ameen of Hooghly, Radha Govind Some, dismissed the claim of the plaintiff, on the 19th July 1843, being of opinion that the plaintiff had entirely failed to prove that the *paras* in question were ever attached to Jhoomjoomee.

The case was taken up by Messrs. Reid, Dick, and Gordon, on the 13th August 1845, when the Court directed their register to ascertain whether the records of the late Board of Revenue shew for what purpose the alleged division of the estate in 1222, was ordered by the Government, and on what principle the transfer of a portion of the lands with a proportionate jumma on them to the collectorship of the 24-Pergunnahs was made; and whether the transfer was effected solely for purposes of Police by creating a mere convenient boundary, or whether the villages transferred were ordered to be transferred as they appeared in the quinquennial register.

The case was this day taken up before Messrs. Reid, Dick, and Jackson, when it appeared that the Board of Revenue, in reply to the register's communication, had stated the circumstances under which the transfer was made, namely for the convenience of the civil courts and the ryots of the estate. The Board forwarded copies of correspondence with the Government, relative to

the transfer, from which it did not appear that any regular division, or *butwareh*, of the land, had ever taken place between the two talooks. It further appears to the Court that the plaintiff has entirely failed to prove his exclusive right to the three *paras* claimed by him as portions of mouzah Ajoodhea, asserted by him to belong to his talook Jhoomjoomee; no mention of these *paras* being made in any of the documents filed by him. The Court therefore confirm the decision of the principal sudder ameen, and dismiss the appeal with costs.

THE 29TH JUNE 1846.

PRESENT:

R. H. RATTRAY and
C. TUCKER,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 250 OF 1844.

Special Appeal from a decision passed by the Principal Sudder Ameen of Bhagulpore, Mohummud Majid Khan, April 20th, 1843; affirming a decree passed by the Moonsiff of Soorij-gurh, Lala Dataram, September 28th 1842.

BHOWANEE SUHAEE AND OTHERS, (DEFENDANTS,) APPELLANTS,

versus

NOOR NURAIN, (PLAINTIFF,) RESPONDENT.

Wukeel of Appellants—Edward Colebrooke.
Wukeel of Respondent—Gholam Sufdur.

THIS suit was instituted by respondent, on the 2d April 1841, to recover from appellants a 2 annas, 13 dams' share of mouzah Nichta, by redemption of the same from the mortgage under which it was held by them.

The lower courts, viewing the case as one of simple mortgage, to which the rules contained in Section 10, Regulation XV. of 1793, were applicable, decreed the redemption sought by respondent.

On the 21st November 1843, a special appeal against this decree was rejected by the Sudder Court; the grounds upon which it was

preferred, not exhibiting any thing upon which it might with propriety be admitted.

On the 17th September 1844, the case was again brought before the Court, on another petition, which placed it altogether in a new point of view. It represented, that the property claimed to be redeemed by respondent had been conditionally sold to appellants' ancestor; that the period of repayment of the money advanced on the occasion, had expired in the Fuslee year 1210; and that, under Construction No. 672, the borrower was not entitled to the benefit of Regulation XVII. 1806. On his own shewing, therefore, of the money not having been paid, it was urged, that respondent's title had become extinct; and that the decree which had declared otherwise, and upheld it, was justly and legally open to reversal.

The fact of the original transaction having been one of conditional sale, and not of simple mortgage, and of the expiration of the stipulated term of payment of the sum lent on the occasion, in 1210 F. was found to be established and the special appeal was admitted.

Now, Section 3, Regulation I. of 1798, provides, that Section 10, Regulation XV. of 1793, shall not be applicable to cases of conditional sale; the decision of the lower courts, is therefore in contravention of the law on which it is avowedly based: and the period of re-payment having expired before the promulgation of Regulation XVII. of 1806, the borrower cannot plead that Regulation, under Construction 672. Respondent admits the non-payment; and the sale has consequently, under his own shewing, become absolute. The statute of limitation bars the suit being entertained.

The Court reverse the decree appealed from, with all costs payable by respondent.

THE 29TH JUNE 1846.

PRESENT:

R. H. RATTRAY and
C. TUCKER,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 279 OF 1844.

Special Appeal from a decree passed by the Acting Judge of Bhagulpore, Henry Metcalfe, December 11th 1843; reversing a decision, passed by the Moonsiff of Rajmahal, May 3rd 1843.

JAMES MASEYK, APPELLANT, (DEFENDANT,)

versus

RAMCHUNDER SAHEE, (DECEASED,) KHEMA SOONDREE DEBBEH, WIDOW OF DITTO, AND MOTHER OF KISHUN CHUNDER SAHEE, THEIR MINOR SON, RESPONDENT, (PLAINTIFF.)

Wukeel of Appellant—Alexander Imlach.
Wukeel of Respondent—Pursun Komar Thâkur Râce Buhadur.

THIS suit was instituted by the deceased husband of respondent, on the 21st June 1842, to recover from appellant 150 rupees, rent of land cultivated and sown by the latter in 1248 Fuslee.

Appellant held a lease from respondent of 506½ beegahs of land, at an annual rent of Company's rupees 427-3-10, nominally for the cultivation of indigo. A portion of the land being found capable of yielding a cold weather crop also, appellant sowed and raised the same; upon which respondent instituted this suit against him for extra rent, to the amount noted, on 240 beegahs, the quantity cultivated for the extra crop, at the rate of 10 annas per beegah. The demand was based on the asserted fact of the land granted by respondent to appellant having been so exclusively for the cultivation of indigo.

The moonsiff dismissed the suit; but in appeal to the zillah judge, his decision was set aside, and a decree passed in favor of respondent. Against that decree, the present special appeal was made to, and admitted by the Sudder Court.

The Court observe, that though this land was leased nominally for the cultivation of indigo, the agreement was in every other respect an open unconditional grant of a certain quantity of land at a certain rent, without any prohibitory stipulation whatever:

they further observe, that the *kubooleut* furnished by the lessee is altogether silent on the subject of a second crop. To provide against a *change* of crops, to other than those for the cultivation of which land may have been granted, Section 56, Regulation VIII. of 1793, requires the *zumeendar* specifically to record the restriction at the time the lease is given. This enactment is not strictly applicable to the case before the Court; but they are of opinion that, in the absence of any interdictory stipulation on the part of respondent and concurring assent on that of appellant, on the point in question, no violation of his engagement has been established against the latter; and that nothing beyond the rent agreed to, can be justly or legally demanded from him.

The decree passed by the acting judge is reversed; with all costs payable by respondent.

THE 29TH JUNE 1846.

PRESENT:

A. DICK,
JUDGE.

CASE No. 97 OF 1844.

Regular Appeal from the decision of the Judge of Zillah Sylhet, H. Stainforth.

BRIJKISHWUR SHAH, (PLAINTIFF,) APPELLANT,

versus

BHEEM MISTRY AND OTHERS, (DEFENDANTS,) RESPONDENTS.

Pleaders—Turik Chunder for Appellant, and Gholam Ahmud for Respondent.

SUIT laid at 1,072 Company's rupees, 8 anas, damages on account of lime.

The case is thus stated by the zillah judge,—and his decision with the reasons thereof:—

" In this case, plaintiff claims 1,072-8-0, the Calcutta market price of 1650 maunds of lime, in Sawun and Bhadoon 1248 B. S., alleging that the defendant, having received 264 rupees, 10 gundas, the full amount of boat-hire, failed to take the said lime to Calcutta, as he had agreed to do, thereby causing loss to the plaintiff to the amount of the sum claimed.

" Bheem Mistree, the defendant, denying that the hire was paid, states that plaintiff wished 64 rupees to be deducted on account of loss on the purchase of lime, alleging that defendant had delayed

bringing the boat (which was being built when the agreement between the parties was made,) for 15 days, and that lime had risen in the interim, so as to cause the extra expence to plaintiff of the said sum of 64 rupees; that defendant objected to the deduction; and that the boatmen not receiving their wages would not take the boat to Calcutta.

" The plaintiff in his plaint, asserting full pre-payment, admits its necessity in his replication; and the case seems to me to depend chiefly on the question whether the full amount of hire was paid or not as alleged.

" The account book of the plaintiff is adduced to shew that the hire was paid in full; and it contains an entry of payment on the 6th Asarh of Sicca rupees 64, the very sum which defendant alleges plaintiff to have wished to deduct, while under the sum 264 rupees, 10 gundahs, the total amount of boat hire at defendant's debit, a similar sum of 64 rupees is at his debit on the 10th of Asarh. It is a singular and suspicious circumstance that the sum which the plaintiff wished to deduct, coincides with the amount of the last alleged payment. Now the evidence of Kishenpershaud, mohurrir of the gomashtah of plaintiff, and his principal evidence, states that two or three days after a date on which 7 rupees were debited in the defendant's *hat chittah* by Beijnath Chowdree, a settlement took place between the parties, under which 64 rupees were found to be payable to plaintiff on account of the loss of lime as alleged; and on looking to the account book of plaintiff the only debit of 7 rupees appears to have been made on the 27th of Bysak, which the vakeel of plaintiff admits to be the 7 rupees debited in the *hat chittah;* and it is quite incredible that if the sum of 64 rupees, which appears from the evidence to have been subject of dispute and arbitration, was found due two or three days after that date, plaintiff should make a *cash payment* of that very sum to the defendant on the 6th of Asarh. That sum appears to me to be the sum which plaintiff wished to deduct.

" The full pre-payment not being proved, the plaintiff, who affirms it and who admits its necessity, can have no claim to the damages sued for; nor can he be allowed to have the price of the lime decreed. If the pre-payment, proof of which rests with plaintiff, was not made, and there is not proof that it was made, defendant was entitled to land the lime whenever and wherever he chose. It is not proved that he appropriated it to his own use. Under these circumstances, without reference to the evidence for the defence, and without waiting for the attendance of the remaining witnesses of the defendant, it is ordered, that the case be dismissed, that the boats be released, and that plaintiff pay his own and defendant's expences."

The pleas in appeal are much the same as those set forth in the plaint; and it is moreover urged that the respondent would not have laden his boat with the lime, if he had not received the full hire pre-

viously, for such was the universal custom;—and that the full payment was proved by his witnesses and account books. The respondent rested on, and referred to his defence in the zillah.

JUDGMENT.

The appellant has failed to prove the full payment of the hire. The entry in his books of the payment of the 64 rupees immediately after arbitration that it was not due, as testified by his own witness, is incredible: and the subsequent entry of the same sum as due from respondent *after* the witnesses' names to the payments, is very suspicious. And the admission of the above witness of a dispute occurring at the ghaut where the boat eventually stopped, is conclusive against the appellant's plea that the lime would not have been taken on board the boat before full payment. The decision of the lower court is therefore affirmed, and the appeal dismissed with full costs.

THE 30TH JUNE 1846.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 29 OF 1845.

Regular Appeal from a decision passed by the 2nd Principal Sudder Ameen of Tirhoot, Syud Ushruf Hosein, July 9th 1844.

CHOONEE LAL PAUPER, (PLAINTIFF,) APPELLANT,

versus

JAMES THOMPSON, (DEFENDANT,) RESPONDENT.

Wukeels of Appellant—A. A. Sevestre and Gholam Ahmud.
Wukeel of Respondent—Edward Colebrooke.

THIS suit was instituted by appellant on the 26th July 1841, to recover from respondent Company's rupees 9,067-2-1, price of saltpetre, as per account filed.

The plaint set forth, in substance, that 'defendant (respondent) had taken a five years' lease (from 1240 to 1244 Fuslee) of certain saltpetre lands, and that plaintiff (appellant) was his agent for the sale and purchase of saltpetre; that after sometime, J'huboo Lâl, in whose name the lease had been taken by defendant, was

induced to relinquish it in plaintiff's favor, who became a 12 annas' sharer in the farm; that, thenceforth, he conducted the business, and, with the assent and approval of defendant, made the settlements with the ryuts for saltpetre produce, and purchased more with the cash proceeds, all of which was duly sent to the godowns of the concern, as can be proved by those attached to them; that copies of the accounts have been submitted to arbitrators, and in those accounts the costs of the establishment, hackery-hire, &c., were included; that plaintiff used to borrow, and himself supply, what was required for advances, and had, previously to this connexion, supplied defendant with such money as he had occasion for: that in 1241 F. he advanced in cash and kind, immense sums, as defendant's signature to the books will prove; that Nukched Râee, a servant of defendant, prepared such accounts as suited his purpose, and he (plaintiff) was sued before the collector, but the suit was dismissed, and this (dismissal) was affirmed by the commissioner; but defendant again brought a regular action against him for rupees 7,463-8-3, stated to have been made away with by plaintiff in 1240-41 F.; that, after plaintiff's answer was filed in that suit, both parties appointed Sheo Suhâee Sahoo and others, as arbitrators; but as they gave in conflicting opinions, the court, with the consent of plaintiff and defendant, appointed Syud Abdool Wahid Khan; that after the papers called for by this arbitrator were filed, plaintiff repeatedly applied for the books in which defendant entered the daily receipts of saltpetre, whether purchased, or received in lieu of rent from the ryuts, and which defendant did not file, knowing his claim was false; that the arbitrator called for them, and sent the nazir for them, but they were not produced; that he (the arbitrator) was afraid of Dr. Mackinnon, who was the *mokhtar* of defendant, and frequently went to his (the doctor's) house, and a decree was the result for rupees 3,045-10, in favor of defendant, no deduction having been allowed for the purchased saltpetre or other items of expense, which should have been carried to plaintiff's credit, but was not; that this decree, which was dated the 25th December 1837, notwithstanding the objections urged against it by plaintiff, was affirmed by the judge; that plaintiff did not appeal from want of means; that when the decree was about to be executed, defendant withdrew with reference to the validity of plaintiff's objections, and gave Dr. Mackinnon, on the part of Bruce and Co., a power of attorney to act, declaring himself to have no claim under the decree whatever; that the principal sudder ameen sent this power of attorney to be verified before the judge; that, after this, defendant sent for plaintiff and told him, that he was willing to allow the rejected items in his favor, and that he might examine his English books; that, when the accounts were compared, defendant entered in plaintiff's books 3,388 maunds 11½ seers of saltpetre, as the quantity received in kind from the ryuts, and 1,379

maunds, 5 seers, purchased with cash collections from them, and put his signature to the entry, saying he would apply to have execution of the decree stayed till the matter should be settled between them; and that, having done this, the balance due by either to the other should be adjusted; that defendant did apply to stay the execution of the decree, through Sheo Suhâee, wukeel, stating that plaintiff had not been credited in the arbitration award with the saltpetre purchased; that, afterwards, defendant in collusion with Mr. Taylor, presented a second petition, through another wukeel, Lala Chutterdhâree Lal, objecting to the deduction of the purchased items, and disclaiming any connexion with the decree whatever, which was held, as their own, by Messrs. Bruce and Co., Mr. Taylor being the mokhtar to execute it,—all in opposition to what he had before stated; that defendant petitioned to the same effect in person, and upon oath, admitting that he had signed the petition, but alleging that he did not understand its contents, it being written in the Persian language, nor was he aware of who was the writer; but the whole of this is contradicted by the statement of Sheo Suhâee; that the principal sudder ameen, without calling for and examining the books signed by defendant, recorded in his proceeding, that, though he (defendant) did sign the petition to stay execution, yet, it appeared, that the writer of it, in collusion with plaintiff, had mis-stated his intention in that part of it which referred to sums carried to the credit of plaintiff, but disallowed on the previous adjustment, and on the 5th September 1839, he (the principal sudder ameen) ordered execution of the decree; that, at that time, plaintiff was in jail, under a decree, execution of which was conducted by Dr. Mackinnon, in consequence of which the books were not examined; that, plaintiff appealed, on this plea, to the judge,—but being done summarily, it was rejected; that in consequence he (plaintiff) has brought a regular action for the rejected items, as per the book in which they are attested by defendant's signature; that plaintiff has sued *in formâ pauperis*; and that his claim is, payment of the sums stated with interest to the date of realization.'

It was deemed most satisfactory to allow appellant's story to be told by himself, and the above exhibits his own version of the transactions and proceedings which induced the action brought by him.

The answer of respondent referred to Sections 2, 3, and 4 of Regulation VI. of 1813, and Regulation XVI. of 1793, under the provisions of which the suit was not cognizable: the case had been disposed of, it was urged, by arbitrators duly appointed by all concerned, and the items of account now claimed were by them considered and disallowed: 'there is no ground of action.'

Further pleas were advanced by either party; but the disposal of the claim was determined by the principal sudder ameen to rest in the first instance on the fact pleaded by respondent, of the ques-

tion having already been before the courts and decided. Deeming nothing new to be established, he dismissed the claim, with costs,—payable, amongst the rest, for the *mokhtar* of respondent, employed in conducting the proceedings for him.

The award of costs to a *mokhtar*, being in contravention of the circular order of the 28th June 1839, so much of the decision appealed from, is reversed and cancelled. Further than this, the Court do not see any ground for interference. No new cause of action has arisen since the judgment passed, in arbitration, on the 25th December 1837 ; and under the provisions of Section 16, Regulation III., and Section 8, Regulation XVI. of 1793, and Construction No. 1129, the claim is not cognizable.

The decision of the principal sudder ameen is affirmed, with the modification above noted,—with costs payable by appellant.

THE 30TH JUNE 1846.

PRESENT:

C. TUCKER,

JUDGE.

PETITION NO. 151 OF 1845.

IN the matter of the petition of Furreed Karegur and others, filed in this Court on the 29th March, 1845, praying for the admission of a special appeal from the decision of Mr. James Reily, principal sudder ameen of Dacca, under date the 27th December, 1844, reversing that of Molvee Lootf Hossein, sudder ameen of said zillah, under date 21st June 1842, in the case of Shamchund Ghose and others, plaintiffs, *versus* the petitioners, defendants.

It is hereby certified, that the said application is granted on the following grounds.

In this case it appeared that the petitioners had on a former occasion sued the plaintiffs under Regulation XLIX. 1793, for cutting and carrying off a crop of surshuf, (mustard seed,) sown by them on 12 kadas* of land, which land they held of one Nuffeesa Khaton, and obtained a decree. The present suit was brought to reverse that summary decision, and the plaintiffs stated that they held the lands of one Anundmohun Ghose.

The sudder ameen dismissed the case.

The principal sudder ameen reversed the sudder ameen's decision, decreeing that the lands appertained to the talook of Anundmohun Ghose. The question before the principal sudder ameen was simply as to the crop by which party sown, and by which gathered. The

right of property was not in issue, and could not be tried between parties who did not claim any such right. I therefore admit the special appeal, and, quashing the principal sudder ameen's decision as irregular, direct that the proceedings be remanded to that officer with instructions to try the issue involved, and that only.

THE 30TH JUNE 1846.

PRESENT :

C. TUCKER,

JUDGE.

PETITION NO. 156 OF 1845.

IN the matter of the petition of Syed Keramut Ali, Motawullee, filed in this Court on the 31st March 1845, praying for the admission of a special appeal from the decision of Mr. E. Bentall, judge of zillah Jessore, under date the 28th December 1844, reversing that of Molvee Lootf Hossein, second principal sudder ameen of said zillah, under date 11th June 1844, in the case of the petitioner, (plaintiff,) *versus* Gudadhur Ghose, defendant.

The petitioner sued the defendant for arrears of rent for the years 1239 and 1240 B. S., and obtained a decree from the 2d principal sudder ameen. On appeal to the judge that officer nonsuited the petitioner on the ground that he had divided his claim, in as much as he had, on a former occasion, sued for the arrears due on account of the years 1238, 1241, and 1242, at which period the balance for 1239 and 1240, must have been due also. This the judge considered to be opposed to the circular order No. 29, of the 11th January 1839. But the circular order in question is expressly provided for dividing a claim of inheritance resting on one and the same plea, into several suits, on the ground of the property sued for forming parts of distinct estates, &c., and the reason assigned for not receiving such claims, is that, if allowed, they would constantly give rise to conflicting judgments passed by different courts, in regard to separate portions of an estate included in the same cause of action.

Now this could never happen in suits for arrears of rent, the rent for each year forming a distinct cause of action; so the suit for one year may be dismissed and that for another year decreed without involving the inconsistency of conflicting judgments. I consider therefore that the judge has mis-applied the circular order. Moreover the judge, to have been consistent, should have dismissed the claim. A nonsuit admits of a claim being reinsti-

tuted in an amended form. But how is the plaintiff to amend his action in this instance? It is obviously impossible, so that nonsuit is not applicable to the case. Further, the judge is wrong in his premises. From the decree in the former case it appears that the collections realized by the plaintiff in 1241 and 1242, had been carried to the credit of the arrears due on account of the years 1239 and 1240, which the court would not allow, but gave the defendant credit for them on account of the years in which the money was actually paid; and thus originated the arrears for 1239 and 1240, after a decree had been obtained for those of 1241 and 1242. This was not the act of the petitioner. Under all the circumstances I consider the decision of the judge to be contrary to practice, and manifestly unjust. I therefore admit the special appeal, reverse the order of non-suit passed by the judge, and direct that the proceedings be remanded to the judge, who will dispose of the case on its merits.

To the Civil Judges.

The 17th April 1846. *English Decisions of the Zillah Courts.*

The Government having been pleased to determine that the decisions of the zillah judges, recorded in English under Act XII. 1843, shall be printed monthly at the presidency, I am directed by the Court to request that, from the 1st May next, the decisions of your court, instead of being copied into a book, in the manner directed by the Circular Order, of the 28th February 1845, be transcribed on separate sheets of paper, and forwarded, at the end of each month, to this office, with a view to their being sent to the press. Each decision is to be copied as soon after it is passed, as may be practicable, so as to allow the whole of the decisions to be despatched within a day or two of the close of the month. Proper care is to be taken in your office to ensure the perfect accuracy of the transcription.

2. When there are no decisions in any month, the circumstance is to be reported to the Court by the judge, or by the officer in charge, immediately on the expiration of the month.

To the Civil Judges.

The 15th May 1846. *Forms of Process, Act XXIII.* 1840.

The Court are pleased to prescribe the following forms for use under Act XXIII. 1840, in addition to those communicated with the Circular Orders Nos. 140 and 218, dated respectively the 1st March and the 15th July 1842, (Western Provinces the 18th June 1841, and the 22nd August 1842.)

1. Notice to respondent.
2. Proclamation for the attendance of the respondent.
3. Notice to mortgagor for the redemption of mortgage and conditional sale of land.
4. Notification of the death, dismissal, resignation, or absence of a vakeel.
5. Notice to plaintiff to prosecute a remanded case.
6. Notice to defendant to defend a remanded case.
7. Proclamation for the appearance of the plaintiff in a remanded case.
8. Proclamation for the appearance of the defendant in a remanded case.
9. Subpœna to produce books and papers.
10. Security bond to be executed by the surety of an appellant.

No. 1.

Notice to Respondent.

In the court of Dewanny Adawlut for the zillah of Hooghly.

Buldeb Sircar of Amirpoor, Pergunnah Kowas, zillah Moorshedabad, Appellant,

versus

Kishen Peerya, widow of Nurnarain Roy, deceased, and guardian of Kishen Inder Narain Roy, infant, Respondent.

To Kishen Peerya, and so forth.

Whereas Buldeb Sircar has presented a petition of appeal, praying for the reversal of the decision of the court of the sudder ameen, dated 5th September 1845, awarding to you possession of talook Ameerabad in zillah Moorshedabad; you are hereby required to acknowledge the receipt of this notice, and further to appear in person or by vakeel in the court of the principal sudder ameen, and to deliver an answer to the petition of appeal on or before the

Given under my hand and the seal of the court, this

L. S. *A. B., Judge.*

No 2.

Proclamation for the Attendance of the Respondent.

In the Court of Dewanny Adawlut for the zillah of Hooghly.

Buldeb Sircar of Amirpore, Pergunnah Kowas, zillah Moorshedabad, Appellant,

versus

Kishen Peerya, widow of Nurnarain Roy, deceased, and guardian of Kishen Inder Narain Roy, infant, Respondent.

To Kishen Peerya, and so forth.

Whereas Buldeb Sircar has presented a petition of appeal, praying for the reversal of the decision of the court of the sudder ameen, dated 5th September 1845, awarding to you possession of talook Ameerabad in zillah Moorshedabad; and whereas a notice was duly issued, requiring you to attend and to deliver an answer to the petition of appeal on or before the
day of ; and whereas it appears from the return of the nazir (or from the return of the deputy sheriff of Calcutta,) that after diligent search you were not to be found, and that the said notice was not served upon you according to the exigence thereof, proclamation therefore is hereby made that if you

do not appear in person or by vakeel on or before the , the court will proceed to try the cause *exparte* and give judgment, as if you had appeared, and answered to the plaint.

Given under my hand and the seal of the court, this

L. S. *A. B., Judge.*

No. 3.

Notice to Mortgagor for the Redemption of Mortgage and Conditional Sale of Land.

In the Court of Dewanny Adawlut for the zillah of Hooghly.

To Baboo Ramdas of Colootollah in Calcutta.

Whereas Ramnarain Bose of Byedbattee has, in a petition dated the , of which a copy is hereunto annexed, applied to this court, for foreclosing the mortgage, and rendering conclusive the sale of certain landed property situate in this zillah, agreeably to the provisions of the deed of mortgage and conditional sale which he holds; you are hereby required to take notice that if you shall not, in the manner provided for by Section 7, Regulation XVII. 1806, and within one year from the date of this notice, redeem the property mortgaged to the aforesaid Ramnarain Bose, the mortgage will be finally foreclosed, and the conditional sale will become conclusive.

Given under my hand and the seal of the court, this 5th day of April 1846.

L. S. *A. B., Judge.*

No. 4.

Notification of the Death, Dismissal, Resignation, or Absence of a Vakeel.

In the Court of Dewanny Adawlut for the zillah of Hooghly.

Ramdhun, of Byedbattee, Plaintiff,

versus

Sheikh Edoo, of Cossitollah in Calcutta, Defendant.

Mohumud Ally, of Pundoah, Plaintiff,

versus

Gholam Hossein, of Sobha Bazar in Calcutta, Defendant.

Whereas Moonshee Chytun Churn, one of the vakeels engaged in the above mentioned causes, depending in this court (or in the court of the moonsiff of ————) has demised: the parties thereto are required within six weeks (or two months) from this date to appear in person at the said court, or to substitute other

* Or has been dismissed, or has resigned, or has been long absent.

vakeels in the room of the said Moonshee Chytun Churn formerly appointed by them.

Given under my hand and the seal of the court, this 5th day of April 1846.

L. S. *A. B., Judge.*

No. 5.

Notice to Plaintiff to prosecute a remanded case.

In the Court of Dewanny Adawlut for the zillah of Hooghly.

Govindram, of Baug Bazar, in the Town of Calcutta, Plaintiff,

versus

Gholam Hyder, of Byedbatty, Defendant.

To Govindram, of Baug Bazar, in the Town of Calcutta.

Whereas the case of Govindram, of Baug Bazar, in the town of Calcutta, *versus* Gholam Hyder of Byedbatty, wherein you are plaintiff, which was decided by this court (or the court of the moonsiff of) under date has been remanded by the court of for further investigation, (or to be tried *de novo*) with directions that it be restored to its original number on the file of this court; and it appears on enquiry, that no vakeel is in attendance in this court to represent you in this * suit: take notice therefore, that in the event of your failing to adopt measures, either in person, or by vakeel, for the prosecution of your suit for the period of six weeks, calculated from the date of the service of this notice, the said suit will be dismissed on default.

* Or that the vakeel retained by you during the previous investigation of the suit, though in attendance, has not received any instructions from you, and that he is not prepared to go on with the case.

Given under my hand and the seal of the court, this day of

L. S. *A. B., Judge.*

No. 6.

Notice to Defendant to defend a remanded case.

In the Court of Dewanny Adawlut for the zillah of Hooghly.

Ramdhun, of Byedbatty, Plaintiff,

versus

Sheik Edoo, of Cossitollah, in the Town of Calcutta, Defendant.

To Sheikh Edoo, of Cossitollah, in the Town of Calcutta.

Whereas the case of Ramdhun, of Byedbatty, *versus* Sheikh Edoo, of Cossitollah, in the Town of Calcutta, wherein you are de-

fendant, which was decided by this court (or by the court of the principal sudder ameen,) under date the has been remanded by the court of for further investigation (or to be tried *de novo*) with directions that it be restored to its original number on the file of this court, and it appears on enquiry that no vakeel is in attendance in this court to represent you in the suit;* take notice therefore, that in the event of your failing to adopt measures, either in person, or by vakeel, on or before the to make answer in the said suit, the court will proceed to try the same *exparte* and give judgment as if you had appeared and answered to the plaint.

* Or that the vakeel retained by you during the previous investigation of the case, though in attendance, has not received any instructions from you, and that he is not prepared to go on with the case.

Given under my hand and the seal of the court, this day of

L. S. *A. B., Judge.*

No. 7.

Proclamation for the Appearance of the Plaintiff in a Remanded Case.

In the Court of Dewanny Adawlut for the Zillah of Hooghly.

Govindram, of Baug Bazar, in the Town of Calcutta, Plaintiff,

versus

Gholam Hyder, of Byedbatty, Defendant.

To Govindram, of Baug Bazar, in the Town of Calcutta.

Whereas the case of Govindram, of Baug Bazar, in the town of Calcutta, *versus* Gholam Hyder, of Byedbatty, wherein you are plaintiff, which was decided by this court, (or the court of the moonsiff,) under date has been remanded by the court of for further investigation, (or to be tried *de novo*,) with directions that it be restored to its original number on the file of this court; and whereas a notice was duly issued, requiring you to adopt measures to prosecute the said case; and whereas it appears from the return of the nazir, (or the deputy sheriff of Calcutta,) that, after diligent search, you were not to be found, and that the said notice was not served upon you according to the exigence thereof: proclamation is therefore hereby made, that in the event of your failing to adopt measures for the prosecution of your suit for the period of six weeks, calculated from the date of the service of this notice, the said suit will be dismissed on default.

Given under my hand and the seal of the court, this day of

L. S. *A. B., Judge.*

No. 8.

Proclamation for the appearance of the Defendant in a remanded case.

In the Court of Dewanny Adawlut for the zillah of Hooghly.

Ramdhun, of Byedbatty, Plaintiff,

versus

Sheikh Edoo, of Cossitollah, in the Town of Calcutta, Defendant.

To Sheikh Edoo, of Cossitollah, in the Town of Calcutta.

Whereas the case of Ramdhun, of Byedbatty, *versus* Sheikh Edoo, of Cossitollah, in the town of Calcutta, wherein you are defendant, which was decided by this court (or the court of the moonsiff of   ) under date the   has been remanded by the court of   for further investigation, (or to be tried *de novo*) with directions that it be restored to its original number on the file of this court; and whereas a notice was duly issued, requiring you to adopt measures to make answer in the said suit, and whereas it appears from the returns of the nazir (or the deputy sheriff of Calcutta) that after diligent search you were not to be found, and that the said notice was not served upon you according to the exigence thereof: proclamation is therefore hereby made that if you do not appear in person, or by vakeel, on or before the   to make answer in the said suit, the court will proceed to try the same *exparte*, and give judgment in the same manner as if you had appeared and answered to the plaint.

Given under my hand and the seal of the court, this   day of

L. S.   *A. B., Judge.*

No. 9.

Subpœna to produce books and papers.

In the Court of Dewanny Adawlut for zillah Twenty-four Pergunnahs.

Kaleekishen Nag, Appellant,

versus

Ramneedee Bose and others, Respondents.

To   of Calcutta.

Whereas your attendance is required to give evidence in the above cause, you are hereby required personally to appear before the Court of Sudder Dewanny Adawlut, on the   day of

next, and to take with you the registry books of the Bank of in which the undermentioned notes of the said bank are registered; viz.

Nos. each for Sicca rupees 500
Nos. each for Sicca rupees 1000

Given under my hand and the seal of the court, this day of 184 .

L. S. *A. B., Judge.*

No. 10.

SECURITY BOND TO BE EXECUTED BY THE SURETY OF AN APPELLANT.

WHEREAS an appeal has been preferred in the Court of Sudder Dewanny Adawlut, by William Hunter, from a decision passed against him and in favor of George Thomas by the Dewanny Adawlut of zillah Purneah, and whereas I inhabitant of have voluntarily become security for the performance by the said William Hunter of all orders which may be passed thereon; I do hereby engage and bind myself, my heirs and successors, that the said William Hunter shall pay the respondent, the said George Thomas, or his representatives, whatever sum may be adjudged by the Sudder Dewanny Adawlut to the said respondent, or his representatives, in default of which, I, my heirs and successors, will be answerable for such sum as may be adjudged against him, and for the performance of whatever order or decree may be passed against him in the appeal abovementioned.

Dated this day of 184

Sealed and delivered in the presence of A. B. & C. D.

TO THE CIVIL JUDGES.

The 18*th May* 1846. *Rules for recording depositions.*

THE Court desire that all the civil authorities, in recording the depositions of witnesses, will, on all occasions, observe the rules described in the following extract (paragraph 21) from the report of the judge of Goruckpore on the administration of civil justice for the past year.

"My attention has been called to this subject, partly from observing that there was no uniform mode of recording depositions of

witnesses in the moonsiffs' courts, and partly from the record itself *prima facie* giving no refutation to the slander easily insinuated by a disappointed suitor that depositions in the lower court had been trimmed. I believe that in some cases depositions were taken in the rough and afterwards copied fair. It has come too, under my observation, that the native judges have in an off hand fashion dismissed a claim upon the ground of gross discrepancies in the evidence, which could not be detected by me after the most careful perusal. From a consideration of these circumstances, I directed that the depositions of all witnesses in every court, in lieu of the old bi-columnar arrangement with question on one side and answer on the other, should be continuously written according to the Sudder Nizamut's exemplar, appended to their Circular Order No. 54, July 16th 1830; that the interrogations put to witnesses should be in order, first by the party or his vakeel, at whose summons they attended, next by the opposite party, last by the native judge; that all the questions put should be numbered in a regular series; and that if by accident or other cause it became necessary to make a fair transcript of the deposition, the original rough draft (of course similarly) attested should invariably be placed on the file. I am thus enabled to ascertain the care and attention with which depositions have been taken, and the latter is discernable from the native judge's own questions. They too have only when they allude to discrepancies, to point out the numbers of the different questions in which the deponent's replies are open to this imputation."

To the Civil Judges.

The 2d June 1846. *Erratum in Circular Order.*

The Court of Sudder Dewanny Adawlut, for the Lower Provinces, direct that an error in the phraseology of the 4th paragraph of their Circular Order of the 23d January last, be corrected by the insertion of the terms "provided such document bear the acknowledgment and verification of both parties to the suit," immediately after the word "parties" occurring in the 6th line of the paragraph in question, as printed in the Bengalee Government Gazette of the 24th March 1846, page 172. [See page 3 of this edition.]

TABLE OF CASES.

Regular Cases.

APPLICATIONS FOR SPECIAL APPEAL.

THE 1ST JULY 1846.

PRESENT:

J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 81 OF 1844.

A Regular Appeal from the decision of the Principal Sudder Ameen of Dacca.

GREESHCHUNDER GOH, (ONE OF THE DEFENDANTS,) APPELLANT,

versus

KISHEN KUNT SHAH AND OTHERS, SONS OF THE LATE PUNDIT RAM SHAH, AND CHUNDER NATH SHAH AND OTHERS, SONS OF THE LATE UTTEET RAM SHAH, (PLAINTIFFS,) RESPONDENTS.

Wukeel of Appellant—Taruck Chunder Rai.
Wukeel of Respondents—Gholam Sufder and Sri Ram Rai.

A SIX anna share of pergunnahs Khuleelabad, Shahzadpoor, Mokeempore, and Khurukpoor, and tuppeh Sultannuggur, was registered in the Dacca Jelalpoor collectorate in the name of Radhanath Rai. Of this, 12 annas belonged to Greeshchunder Goh, and 4 annas to Omakunt Goh. In Magh 1239, Greeshchunder sold 4 annas out of his 12, and Omakunt Goh, his 4 annas of the three first named pergunnahs, to Utteet Ram Shah and Pundit Ram Shah, the fathers of the plaintiffs. After 1244, Greeshchunder sold conditionally the remaining 8 annas of the three first named pergunnahs to the same persons; and the sale having become absolute by foreclosure, Greeshchunder was left as proprietor of only 12 annas of pergunnah Khurukpoor and tuppeh Sultannuggur. In 1243, Greeshchunder being unable to pay the Government rent on the 8 annas of the three first pergunnahs, and on the 12 annas of Khurukpoor and Sultannuggur, the whole of the joint estate was in danger of being sold. The plaintiffs, to save their shares from sale, paid up the full amount. In like manner, Greeshchunder and Omakunt Goh failing to pay the Government rent for the years 1245, 1246, 1247, and to Magh 1248, the plaintiffs from time to time paid the same, and now sue to recover from them the sum of 6,806 rupees, 9 annas, 6 gundas, and 3 cowries.

	Paid by Plaintiffs.				Deduct due by themselves.				Due from Defendants, Principal.				Interest.				Total.			
For the year 1243, ...	876	9	8	0	670	1	9	0	206	7	19	0								
„ 1244, ...	1754	13	8	3	684	3	1	1	1070	10	7	2								
	2631	6	16	3	1354	4	10	1	1277	2	6	2	579	12	14	3	1856	15	1	1
From 1245 to Magh 1248, inclusive, ...	4127	13	7	1	0	0	0	0	4127	13	7	1	821	12	18	1	4949	10	5	2
Co.'s Rs....	6759	4	4	0	1354	4	10	1	5404	15	13	3	1401	9	13	0	6806	9	6	3

Greeshchunder Goh assented to the plaintiffs' statement in regard to the sale of the property to their ancestors. He declared that the plaintiffs had settled with him for the rent up to 1244, and had given him, 6th Bhadon 1245, an acquittance, so that they cannot now claim any thing from *him* down to the end of 1245. In regard to the rents for the subsequent period, he stated that he had sold his 12 anna share in Sultannugur to Rubee Lochun Bose, on the 22nd Jhyt 1246, and had put him in possession,—consequently the plaintiffs should have demanded from that person the rents of Sultannuggur: and as for the rents of Khurukpore, he had regularly paid them to the plaintiffs, and had got receipts which he would produce.

Omakunt Goh also acknowledged having sold his 4 annas in Khuleelabad, Shahzadpoor, and Mokeempoor, to plaintiffs' ancestor, and said that he had paid the rents of 4 annas of Khurukpoor and Sultannuggur from 1243 to 1245; that he had sold 4 annas of Sultannuggur in 1245 to Rubee Lochun Bose, from whom, therefore, the plaintiffs should demand the rents of that mehal. In regard to the rents of the 4 annas of Khurukpoor, he alleged that he held receipts for 1246 and 1247.

Rubee Lochun Bose put in a petition, in which he asserts that he has possession of tuppeh Sultannuggur under registered deeds of sale for 12 annas sold by Greeshchunder Goh, dated 22nd Jhyt 1246, and for 4 annas sold by Omakunt, dated 17th Kartic 1245.

The case was heard by the principal sudder ameen of Dacca, Mr. James Reily. That officer did not consider it necessary to go into the question of the sale of tuppeh Sultannugur to Rubee Lochun Bose, as that person's name had not been registered in the collector's office. Four receipts for rent paid were put in by Greeshchunder Goh, viz.,

1. By Utteet Ram Shah and Kishenkunt to Greeshchunder Goh, being a full acquittance for (including other sums) the rents of 8 annas of Khuleelabad, &c., and 12 annas of Khurukpoor and Sultannugur, up to the 5th Bhadon 1245, dated 6th Bhadon 1245, for rupees, ...	558	0	5	2
2. By Kishenkunt Shah to Greeshchunder Goh for the rent of Khurukpoor and Sultannugur up to Assin 1246, dated 26th Kartic 1246, ...	876	0	0	0
3. By ditto to ditto for Khurukpoor for 1246, dated 2nd Phagoon 1247, ...	500	0	0	0
4. By Kishenkunt Shah to Greeshchunder Goh for Khurukpoor for 1247, dated 5th Sawun 1248,...	499	0	0	0
Company's Rupees	2433	0	5	2

And one by Omakunt Goh, viz., one granted to him by Kishenkunt Shah for the rent of Khurukpoor

from 1243 to 1247, dated 5th Jhyt 1248, for Company's Rupees, ... 998 0 0 0

No evidence having been offered by Omakunt Shah in support of the receipt filed by him, the principal sudder ameen rejected it. He also rejected the receipts filed by Greeshchunder Goh, Nos. 2, 3, and 4, discrediting the evidence of the witnesses adduced in proof thereof. He considered the first receipt fully proved, and the defendants entitled to a deduction of the amount thereof, with interest, from the rent claimed, and accordingly, on the 19th December 1843, decreed that the plaintiffs should receive from the defendants:

Principal, ...	5404	15	13	3				
Interest, ...	1401	9	6	3				
					6806	9	6	3
After deducting the amount of the 1st receipt, Principal,..................	558	0	5	2				
Interest, ...	360	10	9	0				
					918	11	2	2
Company's Rupees					5887	14	4	1

Greeshchunder Goh appealed to this Court. The case was taken up by Mr. Gordon, who, after having caused the evidence of Sooruj Nath Sircar to be taken, in the presence of the vakeels, by the register of the Court, directed that the case should be laid before a full Court.

Mr. Gordon having left the Court, the case was taken up by Messrs. Reid, Dick, and Jackson.

The Court observe that the defence rests on the fact of the part payment of the claim, the right not being questioned, except with respect to the tuppeh Sultannuggur, sold to Rubee Lochun. The defendant states that he is not liable to the claim on account of that share from the date of sale. The Court admit the plea of non-liability of defendant for the revenue of Rubee Lochun's tuppeh from the date of sale; and are of opinion that that portion of the claim of plaintiff should be dismissed; as they see no reason to doubt the *bonâ fide* nature of the transfer. The objection raised by the plaintiff on the ground that the sale was not registered in the collector's office, the Court remark, would apply equally to plaintiff whose own share is not yet so registered. Regarding the question of payment of the rest of the claim, the Court must be guided in their decision by the receipts filed by the defendant in support of this assertion. The principal sudder ameen has admitted the receipt dated 6th Bhadon; but rejects the three others filed by Greeshchunder. The Court see no sufficient ground to reject the evidence of these three receipts, which appeared to them sufficiently proved. The Court further observe that in the order of the principal sudder ameen of

22nd August 1838, 7th Bhadon 1245, recorded on a petition of Greeshchunder Goh, it is stated that the plaintiff Kishenkunt was present in the principal sudder ameen's court on that day in the town of Dacca, which distinctly disproves the plaintiff's assertion that, from the 1st to the 10th Bhadon 1245, he was in Narain-gunge, which he has pleaded with the view to invalidate one of the receipts filed by the defendant. This false statement having been established against the plaintiff, his other assertions regarding the receipts filed are rendered of less force, and the Court feel the less confidence in them. The Court therefore reverse the decree of the principal sudder ameen, and direct that the proceedings be returned to the principal sudder ameen, with orders to calculate the sum due to plaintiff, admitting the validity of the 4 receipts filed by Greesh-chunder, and deducting from plaintiff's claim the amount of these receipts.; he will also deduct the amount revenue due on account of the tuppeh Sultannuggur from the date of the second sale of the same by Greeshchunder and Omakunt: the remainder will be the sum actually due to the plaintiff. The principal sudder ameen, after making these deductions, will give decree in favor of plaintiff for the remainder of his claim. The calculation to be made se-parately for the two defendants, Greeshchunder and Omakunt, and the decree to specify the sum due from each: costs against defendants in proportion to the sum finally awarded to plaintiff, the remainder against plaintiff.

THE 2D JULY 1846.
PRESENT:
C. TUCKER and
J. F. M. REID,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 212 OF 1843.

Regular Appeal from the decision of Principal Sudder Ameen of Manbhoom.

CHOOTA RAJAH JUGGUT JEWON LAL DHUBBUL DEB, SON OF GOPEENATH DHUBBUL, (DEFENDANT,) APPELLANT,

versus

RAJAH HURRISCHUNDER DHUBBUL DEB, ON DEMISE RAJ SOOKMAR DHUBBUL DEB, (PLAINTIFF,) RESPONDENT.

RAJAH GOPEENATH DHUBBUL AND RANEE MOKOOTMONEE, ABSENT IN APPEAL, DEFENDANTS IN ORIGINAL SUIT.

Wukeel of Appellant—Gholam Sufder.

Wukeel of Respondent—Mr. J. G. Waller.

THIS plaint was filed on the 14th of January 1840. Plaintiff states that, in consequence of the incompetency of Rajah Gopeenath, his estate was taken under charge of the Court of Wards. Ranee Seeromonee Dibah, the Rajah's mother, got a farm of it for the support of the family for 2 years 1235 and 1236, Midnapore style, from the Court, on his security, agreed to give him half the profits, and should any loss accrue, to pay the same herself or by her heirs. She held the farm from 1828 A. D., or 1235 F., to 1829 A. D. or 1237 Fuslee, made away with all the sums she collected, and failed in paying even the Government demands. The collector was in consequence importunate with him, and his estate was about to be sold, when he paid into the collector's treasury Company's rupees 8938-7-11 gundas, who gave him receipts for the same. He applied to the Ranee for that sum. That he realised Company's rupees 5000-7-11 gundas, from the farm, and frequently demanded the balance, Company's rupees 3938, from the Ranee. She

died in 1240 without paying him. Ranee Mokootmonee took the farm subsequently: she promised to pay him the balance, but did not. Juggut Jewon Lal is now in possession of the estate, having attained his majority. He sues him, and the other defendant as a precautionary measure, for the above balance, with interest to the same amount, total rupees 7876, and claims interest thereon to date of realisation.

Answer of Ranee Mokootmonee. My disqualified husband's estate was under the Court of Wards; according to the customs of our family, the eldest son of the Pat Ranee has the conduct of all affairs connected with the Raj. Ranee Seeromonee was only entitled to maintenance, which she always enjoyed. No claim against her can be recovered from the Rajah's zemindaree or demanded from us. When the Rajah's estate was under the Court of Wards, proper persons were in charge of it, and the family were in no way in distressed circumstances. The plaintiff got a farm in the name of Ranee Seeromonee, collected from the ryots on the estate himself, paid a portion of the *jumma*, and made away with the remainder of the collections. He collected on his own account: how can he now sue for any loss? I never promised, as alleged, to pay plaintiff from the profits in the Government treasury; I have no power over them.

Answer of Rajah Juggut Jeewon, as above.

The principal sudder ameen, Sham Chunder Ray, on the 4th July 1843, decreed in part for the plaintiff. He held that the farm was not given to plaintiff in the name of Ranee Seeromonee; that the Ranee held herself and heirs responsible to plaintiff, who stood security for her; and that she promised to pay from the profits of the estate. Having deputed an ameen to enquire the actual amount of collections made by the plaintiff, he declared the amount to be rupees 7071-4, after deduction of 10 per cent. for expences. By the receipts put in on the part of the plaintiff, it was proved that the sum of Company's rupees 8938-7-12 gundas had been paid by him to the collector, leaving the sum of Company's rupees 1867-3-11 gundas due to the plaintiff, which, with interest to the same amount, being Company's rupees 3734-7-3 gundas, he decreed in his favor, to be realised from the Rajah's estate, as the debt had been incurred for the family.

By the Court.

The plaintiff pleads the collections were made by Ranee Seeromonee, and were disbursed for the purposes of the family: whereas the ameen's report, and the whole of the evidence on the record, show that the plaintiff himself made the collections, whilst the receipts of the collector, put in by the plaintiff, prove that he paid nearly the whole of the farming *jumma* himself, as the instalments fell due. It is clear that he was the real farmer for the 2 years

alluded to in the plaint, and managed the farm himself; plaintiff, under these circumstances, can have no claim against the defendants personally or the Rajah's estate. The Court therefore decree for the appellant with all costs.

THE 4TH JULY 1846.

PRESENT:

J. F. M. REID,

JUDGE.

PETITION No. 984 OF 1844.

IN the matter of the petition of Anund Kishwur Rae, filed in this Court on the 22d November 1844, praying for the admission of a special appeal from the decision of C. T. Davidson, acting judge of Mymensing, under date the 23d August 1844, confirming that of C. Mackay, principal sudder ameen of Mymensing, under date 21st February 1844, in the case of Mr. C. K. Brodie, plaintiff, *versus* Anund Kishwur Rae and others, defendants. Pleaders Waller for appellant, and Skinner for respondents.

It is hereby certified that the said application is granted on the following grounds.

The plaintiff sued to recover damages from the defendants, Anund Kishwur Rae and certain other persons, in consequence of the former, who was the zumeendar, having instigated the other defendants, his ryots, from working for the plaintiff, whereby the indigo expected from certain lands specified was not produced—laying his action at rupees 2,988.

The principal sudder ameen awarded as damages the sum of rupees 1818, and the judge confirmed the decision.

The principal sudder ameen not having recorded in his decision the mode by which he assessed the damages, was called on to explain. His explanation not being considered satisfactory, it is ordered that the special appeal be admitted, and the case sent back to be placed on the file again, in order that the principal sudder ameen may assess the damages again in presence of the parties, and record distinctly the grounds on which he fixes the amount.

Usual order regarding the return of stamp duty.

THE 7TH JULY 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 230 OF 1845.

Regular Appeal from a decree passed by the Judge of Tirhoot, J. F. Cathcart, May 30th 1845.

ISREE DUTT CHOUDHREE AND OTHERS, APPELLANTS, (PLAINTIFFS,)

versus

SUNKER DUTT JHA AND OTHERS, RESPONDENTS, (DEFENDANTS.)

Wukeel of Appellants—Neel Munee Banoojeh.

Wukeel of Respondents—Abbas Ali.

THIS suit was instituted by appellants, on the 1st August 1844, to recover from respondents Company's rupees 88-11-0-2, principal and interest, being arrears of rent for eleven years, 1241 to 1251 Fuslee, both inclusive, on two beegahs, ten beeswas of land, in mouzah Karinj.

The judge's decree is as follows: 'In this case the plaintiffs, who are proprietors of 14 annas' share of the village of Karinj, sue the defendants for rupees 88-11, being 10 years' arrears of rent, with interest, on 2 bheegas, 10 cottas of land, at the usual rate of the village, viz., 3 rupees per bheega for rice land, and 2-8 for garden ditto. The defendants deny the claim, and state that they have been in possession of and cultivated the land in question for the last 75 years, at the rate of 5 annas per bheega, and for which they had a *kubaleh*. The plaintiffs having failed to shew that the rent had ever been levied at the higher rate, and a former decision of principal sudder ameen, of the 8th May 1834, bearing on the case, having fixed the rate at 5 annas of a similar piece of land: it was ordered, that the case be decreed; but that the rent be levied at the lower rate, viz., 5 annas, each party paying their own costs.'

In appeal, it has been urged, that the case was disposed of in the zillah court without any opportunity being afforded to appellants (plaintiffs) of adducing evidence in support of their claim; that respondents (defendants) having mentioned another suit which bore upon the question, the fact was admitted by them, appellants, but that it never was supposed by them that that suit would form the only ground of disposal of their present claim; which could and can

be established by documents, which they were not permitted to file, and which they pray may be accepted and enquired into, on a revisal of the case.

There is nothing on the record to disprove the above; and it is but a fair inference from the general wording of the decree, that it is a true statement. Besides the decree is incomplete, and cannot be affirmed, if not found liable to reversal or modification, as it now stands; for no specific amount is adjudged of either principal or interest: the respondents are to pay at the rate of 5 annas per bheega, which begins and ends the judgment.

The zillah decree is hereby cancelled; the proceedings will be returned; the parties will be allowed to file any documents they may wish to submit; and the case will be disposed of by a specific decision, after a due consideration of what these and the evidence generally may be found to establish.

THE 7TH JULY 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 188 OF 1844.

Regular Appeal from a decree passed by the 2nd Principal Sudder Ameen of Tirhoot, Syud Ushruf Hosein, April 3rd 1844.

SHEIKH FUZL ALI AND SHEIKH ASGHUR ALI,

APPELLANTS, (DEFENDANTS,) WITH OTHERS,

versus

MOOST. BIBI IMAMUN, RESPONDENT, (PLAINTIFF.)

Wukeel of Appellants—Gholam Ahmud Khan.

Wukeel of Respondent—Abbas Ali.

THIS suit was instituted by respondent, on the 8th of April 1843, to recover from appellants, and other defendants in the case who have not appealed, the sum of Company's rupees 2,133-0-6, arrears of rent on mouzahs Kunchunpore and others, from 1240 to 1246 Fuslee.

The decree is, in substance, as follows: 'The plaintiff (respondent) has sued the heirs of Moost. Hoseinee Begum and Talib Ali, the original lessees, setting forth that 5000 Sicca rupees were paid in advance; that an agreement was entered into on the 17th Bysakh 1238 F., under which the heirs (of the above persons) hold

possession of the lands; that the annual payments from defendants to plaintiff, were fixed at Sicca rupees 629-13-6, and that, up to 1239 F., this was paid; but that from 1240 F., there are balances; that, according to the accounts, after deducting the advance of 5000 rupees, there is due to plaintiff Company's rupees 2,133-0-6, which sum is now sued for. No answer has been filed by the heirs of Hoseinee Begum, but two individuals, Moost. Gomanee Begum and Moost. Mohummudee Begum, have denied any connection with the case; and the heirs of Talib Ali have intimated, in their answer and a subsequent petition, that they are the persons concerned, and that, as regards Hoseinee Begum, every thing has been settled. They state that, up to 1243 F., the villages remained uncontested, but that then they were attached, and resumed by Government, and a settlement was made with them, as farmers. By the accounts it will appear, that a heavy balance is due to them. Whereas an *ijareh-ikrarnameh* (lease agreement) is the ground of this action, and both parties have acknowledged it; and the heirs of Talib Ali have admitted that, as regards the rent, the matter rests with them: the enquiry therefore necessarily bears upon their responsibility. Now, the villages have been resumed by Government since 1244 F.; therefore any claim under the *ikrarnameh* subsequently to that year, cannot be recognised: plaintiff must make her's by a distinct suit. As regards the period prior to 1243 F., defendants assert that they have paid up to 1241 F.; but their evidence in support of this is inadmissible, and their non-payment between 1241 and 1243, is not denied by them; and it is just and proper that from 1240 to 1243, the rent, principal and interest, be paid in conformity with the terms of the *ikrarnameh*. It is ordered therefore that plaintiff receive Sicca rupees 629-13½ for each year from 1240 to 1243 F., principal money, with interest calculated yearly to the date of this decree, but the interest not to exceed the principal: costs to be levied in proportion to the amount adjudged; and interest on the whole to be paid prospectively, till the judgment be satisfied; all this by Sheikh Fuzl Ali and Sheikh Asghur Ali, defendants, and heirs of Talib Ali. But, whereas this decree is founded on the admission of the heirs of Talib Ali, only, it is not to be an obstacle to anything that may be brought forward by the heirs of Hoseinee Begum. The amount now decreed against the above named two persons (Fuzl Ali and Asghur Ali) is Company's rupees 5,873-14-6-16.'

This decree is illegal, and the grounds of it unintelligible; and the *vukeels* of the parties have acknowledged their inability to solve the difficulty which meets every attempt to explain it. The claim was for a specific sum, Company's rupees 2133-0-6; the same being the balance due after a deduction of Sicca rupees 5000, received in advance on the occasion of the lease being granted; principal and interest taken into account. This deduction has been lost sight of

altogether; and if made from the amount adjudged, the remainder would not yield the rents of a single year; while, as the award stands, respondent gets more than double what she sued for.

The judgment is cancelled; and the proceedings will be returned for a proper disposal of the case. The usual orders will issue in regard to stamps and costs.

THE 19TH JULY 1846.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPY. JUDGE.

CASE No. 38 OF 1844.

A Special Appeal from the decision of Raee Radha Govind Shome, Principal Sudder Ameen of Hooghly.

MOULVEE ABDOOLLA, (PLAINTIFF,) APPELLANT,

versus

MOOST RAJESRI DOSSEA AND MUDOO SOODUN SHAH, (DEFENDANTS,) RESPONDENTS.

Pleaders—Golam Sufdur for Appellant, and Sheo Nurayn Chatterjea for Respondents.

THIS action was brought by the plaintiff as *mutuwulee*, or superintendent, of a mosque at Chinsurah, to prove his right to receive the rent of 8 cottahs of land, on which were two houses in Meeanbyre in Chinsurah, and to recover the sum of 30 rupees, 6 annas, principal and interest, of the rent from the commencement of 1244 to Ughun 1248 B. S. The suit was laid at 18 times the amount of the annual rent, and the amount of the rent claimed, or Company's rupees 125.

The defendant, Rajesri, stated that the 8 cottahs in question, of which the juma was 5 sicca rupees per anhum, recorded in the name of her father-in-law, Gopeenath Shah, and a tank, of which the juma was 1 rupee, in the name of her son, Buddun Chunder Shah, were held from the superintendent of the mosque by her husband, Moorlee Shah; that Mahomed Ufzul, the late superintendent, borrowed from her husband 51 rupees for the repairs of the mosque, and mortgaged to him the rents of the 8 cottahs and tank for 3 years, providing in the deed of mortgage, dated 19th Jhyt 1219, that the debt was to bear interest at one per cent per mensem for those 3 years, and that

at the expiration of three years, if the debt were not paid off, the rent of the 8 cottahs, 5 sicca rupees per annum, should be sold to him for the debt, and the rent of the tank, or one rupee per annum, paid to the superintendent for the expenses of the mosque. She contended that the debt having been incurred by Mahomed Ufzul for the repairs of the mosque, and that as the mortgage had not yet been cleared off, the engagement was binding on his successor, the present plaintiff.

Muddoo Sudun Shah, the son of Moost. Rajesri, pleaded that he was not responsible for any rent, his grandfather and father having by gift made over all their property to his mother.

The sudder ameen of Hooghly, Bhyroo Chunder Bose, was of opinion that the plea of the defendant was not tenable, for even admitting the execution of the deed, as stated by her, yet as from the commencement of 1222 (when the 3 years expired) up to the end of 1243, a period of 22 years, the defendant had received $5 \times 22 =$ 110 rupees, being 8 rupees above the amount of the debt, with an equal sum as interest; the mortgage must be considered as paid off. He therefore, on the 22d July 1842, decreed that the plaintiff should recover rent from 1244 to Ughun 1248, both inclusive, with interest, or 32-10-0, with costs, and further interest to the day of payment.

Moost. Rajesri, dissatisfied with this decision, appealed to the judge, who referred the case to Rae Radha Govind Shome, the principal sudder ameen. That officer recorded his opinion that it was clearly proved that the late superintendent did *bona fide* borrow from the husband of Rajesri 51 rupees for the repairs of the mosque, and execute a bond on the terms stated in the answer, and that although *wuqf*, or endowed property, could not be alienated, yet the transaction could not be considered as a violation of the intention of the endower (to keep the mosque in a proper state,) and was binding on the present superintendent, the original plaintiff. He therefore, on the 9th May 1843, reversed the sudder ameen's decree, and dismissed the plaintiff's claim with costs.

On the application of Moulvee Abdoollah for a special appeal, the Court (present J. F. M. Reid) admitted it, on the 13th December 1843, to try whether the *mutuwulee*, or superintendent, of a mosque, could alienate, by sale or mortgage, any portion of the endowed property. The case having come on before Mr. E. M. Gordon, was referred by him, on the 7th June 1845, to a full sitting of the Court, and that gentleman having left the Court, was brought, on the 7th May last, before Mr. Reid, who observed:—"It must be admitted that the rent of the 8 cottahs in question was pledged to the husband of Rajesri for the payment of a debt. It remains to be determined whether, under any circumstances, the alienation, though but temporary, by mortgage, by the late superintendent, is binding on himself or his successor; 2d, whether the fact of the debt having been contracted *bona fide* for the use of the mosque, would alter the

case; 3d, whether, though the mortgage be considered as binding on the alienator, but not on the successor, the case would be altered by the fact of the change in the superintendents being caused not by the death of the former incumbent, but by his resignation in favor of the present incumbent. Before bringing the case before a full bench, I direct that the *moulvee* of the Court be called upon to give his opinion on the points above indicated."

The law officer of this Court stated in his *futwa*, that the alienation by mortgage of land devoted to religious purposes, and of the produce of such land, is invalid; that the fact of the land being mortgaged for the repair, or other benefit of the mosque, does not affect the case; and as the alienation by the former *mutuwullee* was illegal, it does not signify whether the present incumbent succeeded by a death vacancy, or the resignation of his predecessor.

JUDGMENT.

The Court, under the above exposition of the law, annul the decision of the principal sudder ameen, and confirm that of the sudder ameen, decreeing the appeal with costs.

THE 9TH JULY 1846.

PRESENT:

C. TUCKER and
J. F. M. REID,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 169 OF 1844.

Special Appeal from the decision of the Judge of West Burdwan, in appeal from the judgment of the Principal Sudder Ameen.

RANEE CHUNDRA BULLEE KOWAREE, WIDOW OF DAMODHUR DHULL, PAUPER, (PLAINTIFF,) APPELLANT,

versus

RANEE KUMMUL KOWAREE, RAJAH MEHTAB CHUNDER RAY, GUDADHUR BANORJEA, AND OTHERS, (DEFENDANTS,) RESPONDENTS.

THIS is a special appeal against the order of the judge of West Burdwan, dated 20th of June 1843, reversing the decision of the principal sudder ameen, Doorganarain Ray, of the 24th June 1842, admitted by Mr. Tucker on the 19th March 1844.

Plaintiff states her deceased husband, Damodhur Dhull, had a *mokurruree* tenure antecedent to the acquisition of the country by the British Government, called Ramnugger, &c., which he held on a jumma of 406-3-7½ without variation. In 1242, in consequence of the neglect of her husband's *amlah*, some delay occurred in the payment of the rents, and the defendant obtained an *exparte* summary decree under Regulation VII. of 1799 for balances. On applying for its execution he stated her husband was in possession of the said *mokurruree* tenure, without mentioning the fact that it was his *zemindaree* right, and, contrary to law and custom, prayed for permission to re-settle the estate. The deputy collector issued notice to her husband, who pleaded that his *mokurruree* was his *zemindaree* right; that it could not be subjected to re-settlement under a summary decree, and produced sundry documents to prove his *mokurruree* right, which was also admitted by the defendant. He further urged that, by Clause 5, Section 18, Regulation VIII. of 1819, the holdings of cultivating *ryots* only were liable to be re-settled, not tenures of the nature of that which he possessed. In 1244 plaintiff's husband died, and the defendant, having obtained permission to make a fresh settlement, issued notice on her from the *zemindaree cutcherry*. Accordingly on the 14th Maugh 1244, plaintiff sent her people Madhob Lal Baboo and others to the Rajah's house at Burdwan, and paid to Bussunt Lal and others, his servants, 260 rupees balance from 1239 to 1242. They applied for receipts, which were refused till all the balance was paid. Plaintiff sent it through Sreedhun Biswas; notwithstanding, the Rajah rejected the money, and, on the 13th Bysack 1245, made a "sanee bundobust neelam,"—sold the re-settlement of the estate, which was bought at an inconsiderable price by the defendant Gudadhur Banorjea. Plaintiff appealed to the judge and to the deputy collector, and was referred to a regular suit. She accordingly brings this action to have the new settlement upset, to have her *mokurruree* right established, and also for mesne profits from 1245 to 1247 at rupees 393-12-12 gundahs per annum after payment of rents, being rupees 918-13-10-2, with interest thereon rupees 146-2-13-1, making a total of Company's rupees 1065-0-3-2. A supplementary petition was put in on stamp covering the estimated value of the mehal rupees 1625, making the action amount to Company's rupees 2690-0-3 gundahs.

Answer of the Rajah of Burdwan. Plaintiff's husband was a *mokurruree malgoozardar* in my *zemindaree*. Such under tenures being in balance, the balance is recoverable under provisions of Section 15, Regulation VII. 1799, and Clause 5, Section 18, Regulation VIII. of 1819. In 1242 the rents due by plaintiff's husband were not paid; I sued summarily under the above laws; the deputy

collector gave me a decree; in execution the balance was not realised, and an order, granting me permission to make a fresh settlement, was passed. I issued notice as is customary; the *mundle* and *paicks* acknowledged its receipt; and on the 13th Bysack 1245 a re-settlement was made in my cutcherry in full assembly. The sale of such re-settled estate cannot be broken up. Plaintiff, by Regulation VIII. of 1831, ought to have sued within one year from date of reversal of the summary decision.

The principal sudder ameen, in his decision of the 24th June 1842, held that the tenure of the plaintiff, was a *mokurruree*, and not a *khoodkasht* as described in Clause 5, Section 18, Regulation VIII. of 1819; that it was a transferable one, which could only be sold publicly by the collector under Clause 7, Section 15, Regulation VII. 1799, and Act VIII. of 1835; and decreed for the plaintiff, upholding his *mokurruree* tenure, reversing the new settlement, and awarding mesne profits, which he charged to Gudadhur Banorjea, the purchaser.

The judge, on the 20th June 1843, reversed the above decision. The appellant, he observed, had obtained permission from the deputy collector of Bancoorah to make a new settlement, in execution of the decree he had obtained against the respondent under Regulation VII. of 1799. It is clear respondent was in balance. Respondent is not a *mokurrureedar* under Section 18, Regulation VIII. of 1793. It was not necessary as laid down by the principal sudder ameen that the land in question should be sold by the collector. The order for a re-settlement was known to plaintiff, and no action was brought by her for reversal of that order within twelve months as required by Regulation VIII. of 1831. The plaint is inadmissible, and it is unnecessary to enquire into her pleas.

BY THE COURT.

The plaintiff, special appellant's tenure was of a nature of those contemplated in Section 15, Regulation VII. 1799, and was transferable under that law; the sale of which, on balance accruing, could only be made publicly by the Government officers. These are the grounds on which the application for special appeal was admitted. The Court reverse the decision of the judge and decree for the appellant, with costs and mesne profits chargeable to respondent, Rajah Mehtab Chunder, to the date of possession.

THE 9TH JULY 1846.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 168 OF 1844.

Special Appeal from the decision of the Judge of West Burdwan, in appeal from the judgment of the Principal Sudder Ameen.

RANEE CHUNDRA BULLEE KONWAREE, WIDOW OF DAMODHUR DHUL, (PLAINTIFF,) APPELLANT,

versus

GUDADHUR BANORJEA AND OTHERS, (DEFENDANTS,) RESPONDENTS.

THIS is a special appeal, admitted by Mr. Tucker on the 19th March 1844, against the decision of the judge of West Burdwan. The parties are the same as in case No. 169, this day disposed of by the Court, and the circumstances out of which the two appeals arose are similar.

The defendant, Gudadhur Banorjea, purchased plaintiff's *mokurraree* tenure when put up for sale by the rajah of Burdwan. The sale in case No. 169 having been declared illegal, the purchaser must in execution of the Court's decree be ousted, and possession be given to the (plaintiff) appellant.

The judge's decision is reversed, and also so much of the principal sudder ameen's order as directs that mesne profits be realised from the defendant, Gudadhur Banorjea, whose costs and also the mesne profits, are, by this decree, made chargeable to the rajah.

Ordered, that copy of the Court's decree in case No. 169, be filed with the record of this case.

THE 9TH JULY 1846.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 210 OF 1844.

SHEB CHURN SURMA GUNGOLEE AND KALEENATH SURMA, (PLAINTIFFS,) APPELLANTS,

versus

KUMMUL SIRCAR AND OTHERS, (DEFENDANTS,) RESPONDENTS.

Special Appeal from the decision of the Principal Sudder Ameen of Mymensing, in appeal from the judgment of the Sudder Ameen.

THIS was a special appeal admitted by Mr. Tucker on the 21st May 1844.

Plaintiffs sued for several buffaloes sold to them by Baneekishen and Sistee Gope, carried off by the defendants, Kummul Sircar and others.

The defendants, Ateet Ram Gope, Bishnat Gope, and Gowree Sunkur Gope, answered, that they were not responsible to plaintiff; that the heirs of Banee and Sistee should have been sued. These last never sold the cattle; and their widows, Joymonee and Chandmonee, have all along had them in their possession. One of the buffaloes is the joint property of the two widows of Fukeer Chand, Sreekanth, and Gowree Sunkur, and could not be sold by Banee and Sistee but with consent of all the sharers.

In reply, it was urged that Baneekishen and Sistee Gope sold the buffaloes and made them over to plaintiffs, and consequently there was no necessity to include them as defendants,—the parties who had carried away the cattle had been made defendants.

At this stage of the proceedings the widows of Baneekishen and Sistee Gope put in a petition, denying the sale of the cattle by their husbands, and pleaded that their servants only had been sued.

The sudder ameen of Mymensing decreed for the plaintiff. He considered the deed of sale to the plaintiffs proved by the witnesses: the cattle were two years in plaintiffs' possession. One of the buffaloes claimed, he excluded from the decree as being joint property, and awarded the remainder to be demanded from the

defendants, Kummul Sircar, Sunkur Sein, Ateet Ram Gope, Gowree Sunkur, Bishnath, and Gour, with whatever profits they may have derived from the cattle. Costs were made chargeable to al the defendants.

The principal sudder ameen, Mr. Charles Mackay, on appeal by the widows, Chandmonee and Joymonee, nonsuited the plaintiffs because they had not sued them before the sudder ameen. He stated the appellants' pleas had not been investigated in the lower court, and decreed in their favor.

BY THE COURT.

As the special appellants in this court have omitted to name and indicate as respondents the two widows, Joymonee and Chandmonee, on whose appeal to the principal sudder ameen the decision of the sudder ameen in favor of the present appellants was reversed, their petition of appeal must, under the Circular Orders No. 211, of the 1st July 1842, be held to be incomplete, and inadmissible under the Regulations, and is accordingly rejected with costs.

THE 11TH JULY 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 213 OF 1845.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Sarun, Mohummud Rafik Khan, June 27th 1845.

KISHEN CHUND MUHTOON, APPELLANT, (PLAINTIFF,)

versus

GOPAL CHUND, MUNOHUR DAS, AND BALKISHUN DAS, RESPONDENTS, (DEFENDANTS.)

Wukeel of Appellant—Gholam Sufdur.
Wukeels of Respondents—Edward Colebrooke and Hamid Rusool.

THIS suit was instituted by appellant, on the 26th June 1843, to recover from respondents Company's rupees 6,269·14-6-8, principal and interest, in virtue of a *chitha* (or memorandum) dated the 2nd Asin 1245 Fuslee.

Appellant's statement was to the effect that his father, Poorundur, had money dealings with the respondents, who were bankers; and that, on the 2nd of Asin 1245, he, Poorundur, proceeded to

their (respondents') house, when, after the necessary references to the various books of account, a balance appeared in his favor of Sicca rupees 4,101; for which a *chitha* (or memorandum) signed by Gopal Chund was given; upon which the present claim, Poorundur being dead, is preferred by his son and representative.

The *chitha* or memorandum was filed: stating, in as many words, that, on the date specified, the sum named, bearing interest at 10 annas per cent. per mensem, was due from the respondent Gopal Chund to *not* Poorundur Muhtoon, but Rucha Ram, another son of Poorundur, and brother to the claimant (appellant,) Kishun Chund. There is no signature to this paper; which, further, was *plain* originally, but was stamped on payment of the prescribed fine, to render it admissible as a document in the present suit. Appellant states the name of Rucha Ram, instead of his father's, to be attributable to the latter having had three distinct accounts with the house; one in his own name, one in his brother's (Ram Kishun's) and one in his son's (Rucha Ram's;) but of this there is nothing beyond appellant's assertion; nor is there any thing to shew that, as Rucha Ram's heir or representative, appellant has any rights whatever.

This was not, however, the ostensible ground on which the principal sudder ameen dismissed appellant's claim. He did not consider the evidence of the witnesses, who had sworn to the account being compiled on reference to the several books of the banking-house, to be trust-worthy; because, amongst other reasons, nineteen out of twenty of those books had been burnt long before, and the remnants of the nineteen, and the single one saved, had been in deposit in the court since the 7th Bhadoon 1242 F., (15th August 1835,) and were returned to the bankers on the 8th Asin 1249 F. (8th October 1841): of course the asserted references to them in 1245 F. (1838) at the house of respondents, was impossible, and false on the very face of it, and left no doubt of the claim being a tissue of fraud and collusion between the principal who urged it, and the witnesses who upheld it by their testimony.

The dismissal by the principal sudder ameen is affirmed, with all costs chargeable to appellant.

THE 15TH JULY 1846.
PRESENT:
J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPY. JUDGE.

CASE No. 27 OF 1842.

Special Appeal from the decision of the Deputy Commissioner of Assam.

GOURNATH SOORMA MOOJUMUDAR, APPELLANT, (DEFENDANT,)

versus

JOOGEYSUR GOSAIN, RESPONDENT, (PLAINTIFF.)

THE appellant states that he borrowed the sum of 3001 rupees from one Hullee Ram, on the surety of the respondent; that Hullee Ram sued them both and got a decree; that respondent afterwards sued him for the amount on the plea of having paid the whole to Hullee Ram as decreed; that he, appellant, produced proof that the sum of 866 rupees had been deposited in court on his account, in payment of the decree got by Hullee Ram; in consequence, respondent obtained a decree against appellant for 2136 rupees, and was told he might sue whomsoever had received the above sum deposited in the court on account of Hullee Ram's decree; that respondent therefore instituted this suit for rupees 514-9½, of the above 866 Company's rupees again, against him and against the heirs of Hullee Ram; and the lower courts decided in his favor against him, appellant, only, and released the heirs of Hullee Ram. He, appellant, contended that, as in the former suit for the whole amount, judgment was given in his, appellant's, favor with respect to this amount, the respondent's claim against him for this said sum, could not be legally upheld.

The respondent has defaulted.

The Court are of opinion that if the plaintiff in this case had any new evidence to produce, which shewed the former decision on his suit to be erroneous, he should have applied for a review of judgment, he could not again sue the appellant on the same claim. Appeal decreed with full costs, the lower courts' decisions reversed, and the suit dismissed.

THE 15TH JULY 1846.
PRESENT:
J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPY. JUDGE.

CASE No. 2 OF 1843.

Special Appeal from the Judge of Zillah Dinagepoor.

MAHA RAJAH JUGGUT INDUR BUNWAREE LAL BUHADUR AND OTHERS, APPELLANTS, (DEFENDANTS,)

versus

DEEHOO RAEE, RESPONDENT, (PLAINTIFF.)

Pleaders—Raj Narayn for Appellants, and Rama Pershad for Respondent.

THIS is a suit, laid at rupees 1753-7-5-3, for the recovery of profits of three years of a lease for five years of a farm, granted by appellants to respondent, and whence they ousted him at the commencement of the third year, on the plea of his not giving another surety, his original surety having died.

The facts of the lease, of the death of the surety, and the ousting, are admitted by appellants.

The only points for inquiry were, the right in appellants to oust or not: and if not, the amount of profits of the lease during the three years respondent was unjustly dispossessed.

The respondent's allegation is that his surety died a few days after he took the lease; that he offered to give another surety, but was told it was not necessary, and he remained in possession all 1235 and 1236, and paid up the whole of the rent.

On a surety being required from him in 1237, he produced a person named Jomool Mundul, who was rejected by the deputy of the appellants, because respondent would not pay a fee of 100 rupees, and he was ousted.

The appellants allege that they issued two notices on the respondent to give another surety; that he managed to dilly-dally till the end of 1236, when they ousted him, as he was a pauper, sufficiently evident from his suing in this case as a pauper.

The principal sudder ameen decreed the sum of rupees 603-13 out of the claim, as due by appellants, with costs in proportion.

The judge in appeal affirmed the decision of the principal sudder ameen.

A special appeal was admitted, because it did not appear apparent how the lower courts could decree any damages, when no surety had been furnished by the leaseholder on the decease of his original surety, and because the fact of only a small portion of the claim being adjudged, required further consideration.

JUDGMENT.

The appellant having failed to shew that his tenant, the respondent, was in arrears, it follows he was unauthorized to oust the tenant. As to the surety having died, the Court observe, that the landlord could come upon the heirs of the surety, and upon his property, for period of the lease, and therefore had no right to require new security, unless so stipulated in the deeds. Therefore they dismiss the appeal with costs, confirming the decisions of the lower courts.

THE 15TH JULY 1846.

PRESENT:

J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPY. JUDGE.

CASE No. 223 OF 1843.

Regular Appeal from the decision of the Principal Sudder Ameen of Moorshedabad, Mohumud Kuleem Khan.

JY NARAIN BOSE AND OTHERS, APPELLANTS, (DEFENDANTS,)

versus

DOOLA DIBEEAH AND OTHERS, RESPONDENTS, (PLAINTIFFS.)

Pleaders—Ram Pran and Bunsee Budun for Appellants, and Mr. Waller and Ghoolam Sufdur for Respondents.

SUIT laid at Company's rupees 4,573-7-8, for possession on beegahs 247-6-15 of land.

The respondents found their claim on a decree, adjudging to them all the low lands in beel Borapokra; and state that they sued for 298 beegahs of the above *beel*, and got a decree for all the low lands in the *beel*, without specification of any particular number of beegahs; that they took out execution, and were put into possession,

and duly filed their receipt; that a year afterwards, appellants objected by petition to the respondents having collusively obtained possession of high lands belonging to them; that subsequent to that, the respondents took out execution for *wasilat*, or usufruct, and then it was decided by the principal sudder ameen that respondents had got possession of only the low lands, and that they amounted to 293 beegahs; on which accordingly usufruct was ordered. In appeal, the judge decided that the respondents had right only to 46 beegahs, on which they were to be put into possession and receive usufruct. This decision of the judge, the respondents contended, was erroneous, founded on unauthenticated papers, and moreover illegal, inasmuch as he had no power to interfere in the possession already given, and to which no objection had been taken by appellants for nearly a year; and illegal, as being contrary to the decision, which decreed for all the low lands within a certain boundary, whereas he decided they were to have possession on a certain number, 46 beegahs.

The appellants contended that the decision of the judge in execution of a decree was unquestionable, under Construction 1129, and Circular Order 11th January 1839, paragraph 9, and the suit should therefore be dismissed. They also cited in point a decision of the full Court, Maha Rajah Govind Chunder Raee, *versus* Kishoon Chundur, and others, 23d December 1839.

The principal sudder ameen, deeming the decision of the judge in execution erroneous, and the Construction and Circular Order as inapplicable, because the point in dispute was neither for usufruct nor for interest, or matters relating to them, to which in his opinion the Construction and Circular Order were restricted, decreed the claim.

The Court are of opinion that, when the case for execution of the decree was in appeal before the judge, the whole case in every respect was before him, and that he was fully competent to pass order regarding the land decreed to plaintiff and possession thereon, notwithstanding the plaintiff had filed his receipt for possession given. The order of the judge was, they think, strictly in accordance with the decree. On the evidence which he credited, he decided that the low lands in the *beel* amounted to 46 beegahs only, on which therefore he gave usufruct, and ordered plaintiff to be put into possession, and the high lands to be left in the possession of defendant.

Lastly, the Court are decidedly of opinion that the Construction 1129, and Circular Order, 11th January 1839, are applicable to the order passed by the judge, which therefore cannot be called in question by even a regular suit. The Court decree the appeal with full costs, reversing the decision of the principal sudder ameen, and dismiss the suit.

THE 15TH JULY 1846.
PRESENT:
J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPY. JUDGE.

CASE No. 219 OF 1844.

A Regular Appeal from the decision of the Principal Sudder Ameen of the 24-Pergunnahs.

KUNHYA LAL THAKOOR, (DEFENDANT,) APPELLANT,
versus
RAS MUNEE DOSSEA, (PLAINTIFF,) RESPONDENT.

THIS suit was brought by Ras Munee Dossea, the widow of Raj Chunder Doss, on the 29th June 1842, to foreclose the mortgage of pergunnah Bazeedpore, and obtain possession thereof. The plaintiff stated that Kunhya Lal Thakoor, and his brother Gopal Lal Thakoor, borrowing from her husband, Raj Chunder Doss, one lakh of rupees, executed, on the 4th Phagoon 1241, a deed of mortgage and conditional sale of the pergunnah in question, redeemable by payment of the principal and ten per cent. interest by sunset of the 4th Phagoon 1242; that on the 7th Phagoon 1242, they paid up the interest, and renewed the engagement in like manner to pay off the principal and interest by sunset on the 7th Phagoon 1243; that Raj Chunder Doss, having died, had been succeeded by the plaintiff as his heir; that on a division of their family property between Kunhya Lal Thakoor and Gopal Lal Thakoor, pergunnah Bazeedpoor fell to the share of the former, who paying up the interest due, executed a new bond on the 28th Bhadoon 1245, engaging to pay the principal and interest by sunset of the 26th Bhadoon 1246; that as he had not paid, she caused the usual notice, under the Regulation XVII. 1806, to be served on him, and the period allowed by it having elapsed, without the mortgage having been paid off, she brought this action to obtain possession of pergunnah Bazeedpore, laying her action at three times the sudder jumma, Sicca rupees 16,366-9-14-2, or Company's rupees 17,479-0-15-2, or Company's rupees 52,437-2-6-2.

The defendant, Kunhya Lal Thakoor, acknowledged the loan to himself and his brother; but pleaded that a full lakh of rupees had not been paid to them, Raj Chunder Doss having made the payment in the following manner:

By 23 Government promissory notes in the 4 per cent. loan, ...	97,400	0	0
By broken interest due on the said notes,.........	2,286	4	0
By cheque on the Bank of Bengal, ...	313	12	0
Sicca rupees.........	100,000	0	0

and refused, on demand, to allow him the discount at the rate of 2 rupees, 10 annas, for which his agents sold the notes. He also stated that, on the 24th Phagoon 1241, Raj Chunder had taken from him 250 rupees on pretence of presents to his (Raj Chunder's) servant. He further stated, that after the death of Raj Chunder, which occurred on the 27th Jhyt 1243, the plaintiff caused notice of foreclosure to be served on him on 30th Bhadon 1244; but, afterwards, consented to allow a renewal of the mortgage for a further period of a year, receiving from him the interest due up to the 26th Bhadon 1245, amounting to 27,318-9-0, by a cheque in her own name on Messrs. Carr, Tagore and Co., dated 28th of the same month, and also one for 250 rupees in the name of her servant, Debee Pershad, for interest for one day, and costs incurred in suing out the foreclosure. He pleads that the failure to pay up the full lakh of rupees, by not allowing discount, and the exaction of the two items of 250 rupees, were endeavours to evade the usury laws and vitiated the whole transaction.

On the subject of the notice of foreclosure, the defendant claims to reckon the period of one year from the 17th June 1841, 5th Assar 1248, on which date the notice of foreclosure was served on him by the sheriff. He states that having been warned by Mr. Higgins, the attorney of the plaintiff, on the 2d Assar 1249, (15th June 1842,) that the period allowed for redemption would expire the next day, he made fruitless endeavours to get plaintiff either to grant a renewal of the mortgage or receive the money, till at length, on the 3d Assar, or 16th June, he was told by Mr. Higgins, that plaintiff would neither renew the mortgage nor receive the money; that Friday the 4th Assar 1249, or 17th June 1842, being a holiday, (the *Junmo Ushtomee,)* he could not deposit the money in court; but the next day he went to the plaintiff's house with the money which was seen by his own attorney, Mr. Hedger, the plaintiff's attorney Mr. Higgins, and Mr. Swinhoe, attorney of Hurkoomar Thakoor, who advanced the money to him; but was persuaded by Mr. Higgins not to petition the court, as he would endeavour to prevail on the plaintiff to grant further time; but that this failing, he, on the Monday following, (7th Assar, or 20th June,) presented his petition praying the judge to receive the money; that the judge having taken up the case on Thursday the 23d June, asked the plaintiff's vakeel if he was willing to receive the money, and, on his refusal, declined receiving it. He pleads that he has done all that is necessary to save

his redemption, and was about to sue to compel plaintiff to give up his bond, when she anticipated him by bringing this action.

The case was tried by the principal sudder ameen of the 24-Pergunnahs, Hurchunder Ghose, who, on the 2nd August 1844, passed a decree in favor of the plaintiff. He was of opinion that the plaintiff's husband had paid the full lakh of rupees, for the parties having mutually agreed to give and receive the Company's paper at par, the payment thereby must be considered as a cash payment of 97,400 rupees. He did not consider the present of 250 rupees to plaintiff's servant, even if proved, an attempt to obtain a usurious deduction from the amount of the loan, particularly as it was alleged to have been given 20 days after the loan was made. The same opinion was expressed in regard to the draft in favor of Debee Pershad Ghose, which appeared to be a re-payment to plaintiff of the costs incurred by her suing out the intermediate notice of foreclosure, which the defendant's failure to pay the debt compelled her to issue. He did not think it established that the plaintiff had by unfair means prevented the defendant from paying the money within the year of grace allowed. He observed that the plaintiff claims to have the year counted from *the date of the notice* (28th May 1841,) the defendant *from the date on which it was served on him;* and that the Court of Sudder Dewanny Adawlut had laid it down in the case of Ram Gopal turufdar, appellant, *versus* Rumzan Beebee, (decided on 19th June 1837, in page 166, Volume VI. Select Reports,) that the year must count from the date of issue of the written notification, so that as it was issued by the sheriff on the 17th June 1841, the year expired on the 16th June 1842. As therefore the defendant had not paid, or tendered the money within the year, his petition of the 20th June 1842 being merely an overture to pay, stating that muhajuns were ready to produce the money if the deeds were given up to them, not a legal tender of the money itself: under these circumstances, he passed a decree in favor of the plaintiff, awarding her possession of pergunnah Bazeedpore, with mesne profits from the date of institution of the suit until possession be given, with interest thereon from the date on which the amount should be fixed. The costs were charged to the defendant.

The case, having been taken up by Mr. E., M. Gordon, was by him referred to a full sitting of the Court.

OPINION.

The claim in this case is to obtain a decree, declaring that the conditional sale of pergunnah Bazeedpore made by defendant to plaintiff has, by defendant's omission to pay the money lent, become absolute, and to obtain possession of the estate. The execution of the bond of conditional sale is not questioned; but it is contended, in the first place, that the transaction was illegal in itself and

the bond consequently void, because the whole sum stated to be lent on mortgage was not paid in cash, but partly, indeed chiefly, in Company's paper; that at the time of transfer of this paper, the paper of that description (4 per cent.) was at a discount in the Calcutta market, and as no discount was allowed in the transaction, in estimating the value of the paper, it cannot be said that the borrower received the full amount, which, under the bond, the plaintiff engaged to lend him; and that in fact the transaction was an evasion of the usury laws. On this point the Court observe that the value of Company's paper being variable, and sales of it being made at various rates among various parties even on the same day, the valuation of it in this case at a price a little below what is contended to have been the market price, cannot affect the validity of the transaction. There is no reason to doubt that the agreement so to estimate the value was made willingly by both parties, and there is not the least ground for suspecting the value to have been fixed with a fraudulent intent to prejudice the borrower and to evade the law.

The appellant's pleader cited a case, Davidson *versus* Barnard, assignee of Timmings bankrupt, Espinasse's Nisi Prius Reports, Vol. I., page 10, in which the Court of King's Bench (Lord Kenyon) nonsuited a lender under similar circumstances for making over Government securities at a higher value than the market price of the day. The Court are of opinion that this case cannot be received as a precedent; and further observe that, as it was decided by the strict rules of common law, the lender had still his remedy in a court of equity; whereas this Court is bound to decide both according to the facts and the equity of the case, and the equity is clearly in favor of the respondent: for it is in evidence that the appellant, when the loan was under negociation, did ask for the discount, and on Rajchunder Doss declining to allow it, he, on due deliberation, consented to take the promissory notes at par; and that he raised no objection on this score when, on 7th Phagoon 1242 B. S., Raj Chunder Doss, and, on the 28th Bhadon 1245, his widow, the respondent, allowed him to renew the bond and get a fresh period to pay off his debt; nor indeed until the present action, when he resorts to the most frivolous excuses to set aside the bond, pleading that a present given by him to propitiate the servants of the lender and the demand of repayment of the costs incurred on the issue of the first notice of foreclosure, were evasions of the usury laws. The Court, therefore, consider the objections of the appellant to the validity of the transaction untenable.

The defendant, in the second place, states that, admitting the transaction to be good and legal, the sale cannot be considered to have become absolute, because the money was tendered within the period of one year allowed by law. The Court on this head observe that

it has been repeatedly held that the date from which the period is to be counted is the date of the notice issued, in this case the 28th May 1841; and the defendant is in error in supposing that it should be counted from the date of service of the notice. This rule has been adopted not only with reference to the terms of the Regulation XVII. 1806, but also to the principle of the enactment. The one year's grace allowed by law to the borrower, after the period mentioned in his own engagement has expired, being clearly a matter of favor, there can be no reason for allowing any further indulgence, and the enactment must be construed strictly and to the letter. The defendant was at liberty at any time during the year either to tender the sum borrowed to the lender or to lodge it in the judge's office. It seems very doubtful whether any personal tender was made, but, if it had been actually made, as stated, on the 18th June, it would not have saved the estate, even if the period be computed from the date of service of the notice, viz. 17th June. The fact that the 17th June was a holiday at the public offices, though it might be admitted as a sufficient reason for not having paid the money into court, was no bar to the private tender. Again, the offer to pay the money into court, made on the 20th June, was subsequent to the expiration of the legal term of grace upon every principle of calculation.

On the whole the Court see no reason to doubt that the plaintiff has acted legally up to his engagement; and that as the defendant has not repaid the money lent within the term allowed, the sale has become absolute. They see no reason therefore to interfere with the decision of the principal sudder ameen. Costs against the defendant.

THE 16TH JULY 1846.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 232 OF 1844.

Regular Appeal from the Principal Sudder Ameen of Moorshedabad.

KONWUR RAM CHUNDER BAHADOOR, (DEFENDANT,) APPELLANT,

versus

MONOHORA DASSEE, WIDOW, NEELKANTH DOSS, BROTHER, AND KHOODERAM DOSS, FATHER OF BYKANTH NATH DOSS, (PLAINTIFFS,) RESPONDENTS.

ALUNG MONEE, WIDOW OF SHAM MUNDLE, AND AS GUARDIAN OF LUKHEENARAIN AND NOWCOWREE CHUNDER DOSS, MINORS, CLAIMANT IN ZILLAH.

ON the 11th Jheit 1242, Bykanth Nath Doss got a putnee talook of three mehals, turuf Sagurparah, at a jumma of Sicca rupees 3,293-8, from the defendant, Konwur Ram Chunder, zemindar of pergunnah Gooas, paying the sum of Sicca rupees 4,940-4 for the same. He was put in possession and paid rents accordingly. Bykanth Nath purchased three other putnee talooks from parties to whom they had been granted by the zemindar, and died on the 27th Bysack 1246, leaving the plaintiffs in possession of his estate. They applied to the zemindar to have their names entered in his *serishtah* as heirs and successors of the deceased to his purchased talooks, as well as to that he had himself obtained direct from the konwur, offering, at the same time, security and the requisite fees under Regulation VIII. of 1819. The zemindar, at the instance of Messrs. Watson and Co., mortgagees of the konwur's entire zemindaree since 1248, would not accept the offer of the plaintiffs, but demanded large loans from them which were refused. In consequence of this, the zemindar declined registering their names as proprietors of the three purchased mehals, and from Bysack 1246 has dispossessed them of all the talooks above referred to, though no balance was due on them, and appointed an attaching officer to the charge of them. The plaintiffs, Monohora and Neelkanth, then appealed to the judge to have their names registered and offered

security. He issued notice to the zemindar, who acknowledged its receipt, but neither registered their names nor took security from them, nor would he accept the fees offered. The judge, on the 14th December 1839, issued an order to the zemindar to register plaintiffs' names. He however persisted in refusing to do so, and gave the mehals over to Messrs. Watson and Co. Plaintiffs therefore sue for possession of turf Sagurparah, the putnee talook bought by Bykanth Nath himself from the zemindar, (a separate action to be brought for the purchased mehals bought from Musst. Doolubba and others.) The jumma of Sagurparah is Sicca rupees 3,293-8: the proceeds in the mofussil Sicca rupees 4,774-7-5. After allowing 108, expence of collections, there remains a balance of 1,372-15-5 per annum due to plaintiffs, which, for 4 years, 1246 to 1249, amounts to 5,491-13; the interest thereon for the said period is 1,345-14-7½, total Sicca rupees 6,737-11-7½, or Company's rupees 7,187-1-3. Estimating the value of the putnee at 5,267-9-7-1, plaintiffs sue the zemindar and Watson and Co. for Company's rupees 12,456-10-10-1, and pray that Company's rupees 7,187-1-3, with interest thereon and mesne profits *pendente lite* and to date of realization may be awarded, and order issued to the zemindar, Konwur Ramchunder, to register their names and to receive their rents.

Answer of Messrs. Watson and Co.—We are not in possession, as will be shown by the rajah's answer. He has appointed a *sezawul* on the *mehal.* We got a mortgage from the zemindar in 1248 only, and had nothing to say to the mehal in 1246 as alleged by the plaintiffs. Moreover, the right of succession to Bykanth Nath's estate must first be settled; until that be done the plaint is inadmissible..

Answer of Konwur Ramchunder.—Khooderam never applied to me. He never gave security or the requisite kaboleut under Regulation VIII. 1819, or demanded possession within one month as is necessary. As to the other two plaintiffs, it is immaterial whether they appeared or not. How could I enter into engagements with strangers? I could only engage with Bykanth Nath's heirs. I was not at my house at Nusseebpore when it is alleged Neelkanth applied to me; I was in Calcutta. The right of succession to Bykanth Nath's estate is not settled, and I may yet be called on to give account to his heirs. All suits under Regulation VII. of 1799, and Regulations VIII. 1819, and VIII. 1831, come within the jurisdiction of the collector's and no order can issue from the civil courts.

The principal sudder ameen, on the 28th June 1844, decreed for the plaintiffs. He held that they applied for registry to the zemindar as proved by witnesses, with whom the sum of 3,000 rupees

was deposited for that purpose. The judge's proceedings of the 4th December 1839 show, that he issued an order directing the zemindar to register the names of the plaintiffs. As to the plea urged by the defendants, that there are other sharers to the estate of Bykanth Nath, he declared that they had the option of asserting their interests, if they had any. He awarded possession of turf Sagurparah, and directed that the plaintiffs should pay the requisite fees to the zemindar, and, at the same time, furnish security to him. Wasilaut was charged to the zemindar from date of dispossession, with interest from date of its being ascertained. Plaintiffs' costs payable by the zemindar, and the costs of Watson and Co. by the plaintiffs. Any right which the claimant's minor sons may possess, not to be affected by this decree.

By the Court.

The Court see no reason to interfere with the decision of the principal sudder ameen, save in respect of the defendants Watson and Co.'s costs charged to the plaintiffs, and the order for payment of fees by the plaintiffs on the registry of their names. By Section 5 of Regulation VIII. of 1819, a fee of 2 per cent. (as far as 100 rs.) on the annual rent is fixed on alienation of a putnee talook by sale, gift, or otherwise, as set forth in Section 3 of that Regulation; the law does not, however, subject a successor to a putnee tenure by inheritance to the payment of any fees. The respondents are therefore exonerated from such payment. The costs of Watson and Co., who are only mortgagees of the estate, are charged to Konwur Ramchunder, the zemindar. The condition of furnishing security on requisition, being understood to be one of the original liabilities of putnee tenures as set forth in the preamble to the law quoted, the Court uphold the order of the principal sudder ameen in that matter, and, amending his decision as above, decree for the respondents with costs.

THE 18TH JULY 1846.
PRESENT:
J. F. M. REID,
JUDGE.

PETITION No. 170 OF 1845.

IN the matter of the petition of Doolea Ghosain, filed in this Court on the 5th April 1845, praying for the admission of a special appeal from the decision of Syud Abdool Wahid Khan, principal sudder ameen of Moorshedabad, under date the 26th February 1845, reversing that of Sheo Chunder Mokerjee, acting sudder ameen of the same district, under date 30th March 1843, in the case of petitioner, pauper, plaintiff, *versus* Bhoodun Bewa and others, defendants.

The plaintiff sued *in forma pauperis* to recover certain property left by her deceased husband, valued at Rs. 752-13-16-1, stating in her plaint that she reserved her claim to cash and book debts for a future suit. The acting sudder ameen gave a decree in her favor. The principal sudder ameen nonsuited the original suit, because petitioner had not sued for the whole of her claim. This is contrary to the precedent laid down in the case of Bholanath Baboo, petitioner, (see page 33, part 2, Vol. I., Summary Reports) The plaintiff is entitled to have her present claim judicially decided. Should she hereafter sue for the cash and book debts, it will be determined whether her suit can be heard. The special appeal is admitted, and the case sent back to the principal sudder ameen to restore the appeal to the file and decide it on its merits. Petitioner being a pauper, there is no stamp to be returned.

THE 21ST JULY 1846.
PRESENT:
A. DICK,
JUDGE.

CASE No. 127 OF 1844.

Regular Appeal from the decision of the Principal Sudder Ameen of Mymensing, Mr. C. Mackay.

GOUR MUNEE CHOWDRAIN, WIDOW OF BHYROBE NATH RAEE, APPELLANT, (DEFENDANT,)

versus

KALEE DAS NEYOGEE, RESPONDENT, (PLAINTIFF.)

Pleaders—Sree Ram Raee and Tarik Chunder for Appellant, and Mr. Sevestre and Uzmutoolla for Respondent.

SUIT laid at Company's rupees 7,991-8-3, due on bond, principal and interest.

This claim is founded on a bond, and the suit was decided by the principal sudder ameen *exparte* and without taking the depositions of the witnesses to the bond. Therefore the decree is in contravention of Section 15, Regulation III. 1793.

Ordered that the suit be remanded for re-trial.

THE 22ND JULY 1846.

PRESENT:

J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 33 OF 1842.

Special Appeal from the decision of William Onslow, Acting Judge of zillah Mymensingh.

MUDUN MOHUN CHUND, APPELLANT, (DEFENDANT,)

versus

TARAMUNEE DIBEEAH AND OTHERS, RESPONDENTS, (PLAINTIFFS,) DEFAULTING.

Pleader—Mohumud Huneef for Appellant.

SUIT laid at rupees 1,105-2-3-3, on account of revenue paid for a joint estate.

The respondents were joint sharers with many others in an estate, known as talooq 8 annas of Newaz Alee. The talooq was put up to sale for arrears of revenue, and preserved from sale by respondents paying up the arrears. This suit was instituted, for repayment of the arrears so paid, against appellant, a conjoint sharer by purchase, together with several others also conjoint sharers. Some of them proved they had paid up their respective portions, and were released.

The appellant also attempted to prove that he had paid up his portion of the revenue; but as the six receipts he filed were for revenue due by the heirs of Newaz Alee, from whom appellant was a purchaser of a small share only, and as he could not otherwise shew that those receipts were solely on account of the share he purchased, the judge decreed against him, or rather confirmed the decree in which he was conjointly rendered liable for the arrears paid by respondent to stop sale, with those sharers who had failed to prove payment of their respective dues.

From the judge's decision this special appeal was preferred, and admitted by Messrs. Tucker and Reid, because it appeared contrary to a former decree, by which appellant had been released from a claim of respondents for the revenue of one (1239 B. Æ.) of the two years (1239 and 1240 B. Æ.) now claimed.

JUDGMENT.

First.—The Court observe that the appellant was in the former case released from liability for revenue of 1239, on account of his two anna purchase only; consequently it was still incumbent on him in this case to prove that he had paid up his revenue for 1239, on account of his one anna purchase,—he being a sharer in the estate in question to the extent of three annas, under two separate purchases.

Secondly.—It is evident, the appellant did not prove the payment of the whole of the revenue due by him before the judge, even if all the six receipts, which he then filed, were admitted to be for the portion of revenue due by him; because the appellant has, during this special appeal, attempted to file five more receipts, on account of the revenue of the said two years, 1239 and 1240 B. Æ. The Court therefore dismiss the appeal with full costs.

THE 28TH JULY 1846.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 223 OF 1838.

Regular Appeal from the Judge of Backergunge, Mr. Smelt.

LOOTFONISSA AND MUNEEZA KHANUM, AND FUKHUROODEEN HYDER, ON HIS ATTAINING MAJORITY, APPELLANTS, (DEFENDANTS,)

versus

MEHERONISSA KHANUM AND KAZEE AZMUT-OLLAH, RESPONDENTS, (PLAINTIFFS.)

ZOOBDA KHANUM, CLAIMANT.

Vukeels of Appellants—Moonshee Gholam Sufder and Molovy Lootf Al Rahman.

Vukeel of Respondents—Gholam Ahmed Khan and Rama Pursaud Ray.

Vukeel of Claimant—Mr. Skinner.

THIS case was disposed of by Mr. Dick on the 3rd February 1842, and sent on for another voice; and was then laid before Mr. Reid, by whom it was decided on the 7th May 1841

The opinions of the above judges are recorded in the vernacular language in their proceedings of the dates quoted.

Mr. Reid in his proceedings of the 20th December 1844, recorded in English, has given an abstract of both judgments. He is of opinion that the plaintiffs should be nonsuited and charged with costs.

On the death of Radhakishen and Molovy Mahomed Allee, the vakeels of Kazee Azmut-ollah, notice was issued for appointment of other vakeels; none were however nominated while the case was pending before Mr. Reid.

On the 7th January 1845, the case, having been sent on for a third voice, was filed in Mr. Barlow's serishtah, and was this day brought to a hearing.

From the record it appears that the plaintiffs obtained a decree in the zillah court. In appeal before Mr. Dick the claim of *one* of the plaintiffs, Kazee Azmut-ollah, was held in abeyance, and he was declared at liberty to institute a separate suit, with reference to the precedent at page 12, Volume IV. of the Sudder Dewanny Reports for 1825, in the case of Ram Gholam Sing, appellant, *v.* Keerut Sing and others, respondents.

Mr. Reid held that, with reference to the precedent quoted, the "original claim should be nonsuited and all costs charged to the respondents." Subsequently to this, Kazee Azmut-ollah filed a vakalutnameh and petition, relinquishing all claim to the purchase of one half of Meheronissa's rights in the property disputed; he prayed his name might be struck off the record, and that he might be exonerated from the costs which, under Mr. Reid's decision, are charged to him.

This is a case of champerty. The plaint clearly shews that Azmut-ollah engaged to defray the expences of the suit, in consideration of 8 annas share of property in litigation sold by the plaintiff to him. I concur with Mr. Reid in a nonsuit, and also in the matter of charging the respondents with costs. Azmut-ollah should have withdrawn his claim and pleaded against costs before. At this stage of the proceedings his plea is inadmissible. I therefore make the decision final, in concurrence with Mr. Reid.

THE 29TH JULY 1846.
PRESENT:
J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPY. JUDGE.

No. 134 OF 1845.

A Regular Appeal from the decision of Mr. C. Mackay, Principal Sudder Ameen of Mymensingh.

OMA DEBEA, GUNGA DHUR LAHUREE, LUKHEE NARAIN LAHUREE, AND SHEEB PERSHAD LAHUREE, (DEFENDANTS,) APPELLANTS,

versus

KISHEN MUNEE DEBEA, (PLAINTIFF,) RESPONDENT.

Pleaders—Sree Ram Rai for the three first, and Ruknooddeen for the fourth Appellant—Baboo Pursun Koomar Thakoor and Mr. Waller for the Respondent.

THE plaintiff, widow of Govind Pershad Lahuree deceased, who, by her account, died on the 5th Bhadoon 1238, or 20th August 1831, instituted this suit on the 14th August 1843, or 30th Sawun 1252, to recover from Musst. Oma Debea, the mother, and the three male appellants, brothers of her husband, one fourth of the family property consisting of personal property value 2000 rupees, and the following landed property—3 beegahs, 7 cottahs, 7 dhool of *khanneh baree* or homestead land, held rent free in Junardhun Batee, and turuf Khajoora, a sixteen gundah share of a kharijeh kheragee (or rent paying) talook in pergunnah Tegatchee called turuf Soorjapara, and a similar share of the kheragee tenure kismut Uchla Khalee in zillah Rajshahee, and an 8 anna share of the purchased talook Mulmul and the shikmee talook of Baboopore in zillah Mymensingh, together with the mesne profits which had accrued on the landed property, and her own special property which had been bestowed on her at the time of her marriage. The suit was laid at 13,329 rupees, 10 annas, 5 gundahs, 18 krants, and by a supplementary plaint at 13,336 rupees, 13 annas, 3 gundahs, 13 krants.

The defendants declared that the homestead in Junardhun Batee had, on a partition of family property, fallen to the share of Gowri Pershad Lahuree, an uncle of the male defendants, who had by a petition claimed it as his property, and that they knew nothing of the land in Khajoora: that talook Baboopore had been granted by Gowree Sunker Acharj, father of Oma Debea, to her husband,

Huri Pershad Lahuree, on their marriage for her maintenance during her life time; consequently the plaintiff whose husband was dead could have no claim thereto: that talook Mulmul Ganteepara had been purchased in equal proportions by Khalika Pershad Chuckerbutty and Oma Debea, who paid the purchase money for her moiety from her own *stridhun*. They also pleaded that Huri Pershad, their father and husband, having at his death left six surviving children, the plaintiff could only claim, as the widow of one of them, one sixth part of the property left by the father; and that the suit was barred by the rule of limitation, more than 12 years having elapsed since the death of plaintiff's husband and the institution of this suit.

The case was tried by Mr. C. Mackay, the principal sudder ameen of Mymensigh, under special authority from the Court of Sudder Dewanny Adawlut—the land lying in different districts. That officer, on the 20th February 1845, decreed to the plaintiff one sixth of the talook Baboopore, of the land in Soorjapara and Uchla Khalee, and of one beegah, nine cottahs of ancestral *khanabaree* in Junardhun Batee, with mesne profits from the 5th Bhadoon 1238 to the date of possession. He did not consider the plaintiff to have proved her claim to the rest of the property claimed. The costs were made payable by the defendants in proportion to the amount decreed.

Both parties appealed from this decision: the defendants in this case, the plaintiff in No. 221 of 1845.

The defendants pleaded that there was full proof that the talook Baboopore had been given to Oma Debea by her father; and that the plaintiff had no claim to share at all—because she had left her husband's family and had resided in her father's house; and because the cognizance of the claim was barred by the rule of limitation, which should be reckoned from the year 1236, when her husband, quitting his paternal dwelling, had gone to reside in his father-in-law's house; and that, even supposing the date of his death to have occurred, as asserted, on the 1st Bhadoon 1238, a period of more than 12 years had elapsed from that date to the institution of the suit. They also claimed costs on the amount of the claim dismissed.

The plaintiff, declaring that only four of Huri Pershad Lahuree's sons having survived him, each was entitled to a fourth of the property, appealed to obtain a fourth of the property decreed as well as of that the principal sudder ameen rejected.

By the Court.

The points for consideration are as follows:—

1st. Is the cognizance of the suit barred by the rule of limitation? The suit was instituted on the 14th August 1843, or 30 Sawun 1250. The plaintiff asserts that her husband died on the 20th August 1831, or 5th Bhadoon 1238. Even assuming that the

date of his death was, as asserted by the defendants, the 1st Bhadoon, or 16th August, the period of twelve years had not expired by two days. The Court reject the plea of the defendants that the commencement of the action must be reckoned, not from the day on which the petition of plaint was filed (14th August 1843,) but from that on which, after due permission obtained from the Sudder Dewanny Adawlut for the trial of the suit in zillah Mymensingh, part of the property being situate in Rajshahee, it was placed for trial on the file of the principal sudder ameen of Mymensingh; and rule that the cognizance of the suit is not barred.

2nd. Is the plaintiff debarred from suing by the fact of her having chosen to reside in the family of her father instead of in that of her husband? On this point the decision of the Privy Council in the case of Kasheenath Bysakh *versus* Huree Soonduree Dossea and another, (see page 85, Morton's Reports,) is, in the opinion of the Court, quite decisive as to the right of the plaintiff to sue.

3rd. The vakeels of the plaintiff abandon the plea that their client is entitled to one-fourth of the family property instead of one-sixth, as urged in the petition of appeal.

4th. The remaining point for consideration is, the property in which the plaintiff is entitled to share. On this point the Court see no reason to interfere with the decision of the principal sudder ameen.

On the above grounds the Court affirm the decree of the principal sudder ameen, dismissing the appeals of both parties. Costs with the appellants in each case.

THE 29TH JULY 1846.

PRESENT:

J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPY. JUDGE.

CASE No. 221 OF 1845.

A Regular Appeal from the decision of Mr. Mackay, Principal Sudder Ameen of Mymensingh.

(PLAINTIFFS,) APPELLANTS,

versus

OMA DEBEA AND OTHERS, (DEFENDANTS,) RESPONDENTS.

THIS is an appeal from the decision of the principal sudder ameen of Mymensingh, alluded to in appeal No. 134 of 1845, this day decided, and for the same reasons the appeal is dismissed with costs.

THE 29TH JULY 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 231 OF 1845.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Bhagulpore, Mohummud Majid Khan, June 17th 1845.

SYUD SUKHAWUT HOSEIN, APPELLANT, (DEFENDANT,)

versus

GOUR BUKSH SINGH *alias* SUDDUN LAL, RESPONDENT, (PLAINTIFF.)

Vukeel of Appellant—Gholam Sufdur.
Vukeel of Respondent—Aftaboodeen.

THIS suit was instituted by respondent, on the 18th January 1844, to recover from appellant (and others who do not appeal) the sum of Company's rupees 8,749-14-11-4, principal and interest, being arrears of rent on certain portions of mouzah Shahpore and others, altogether twenty villages, in pergunnah Soorijgurh, from 1241 to the middle of 1245 Fuslee.

On the 30th December 1842, respondent was nonsuited in a claim brought forward by him for what has now (again) been sued for; and his plaint in that suit will exhibit an intelligible outline of the matter now before the Court. The statement is, in substance, that, ' in 1230 F. respondent purchased the share of Sujait Hosein Khan (5d. 17c. 16b.) and that of Fatima Begum (4 annas, or thereabout) in twenty villages (as set forth;) that appellant took a lease of the same for 9 years, 1238 to 1246 F., at an annual rent of 1751 Sicca rupees; a *pottah* and *kaboolcut* (deed of lease and agreement) being executed, to which both parties assented; that the lessee (appellant,) as farmer, was put in possession; that, after this, one Kazee Imam Ali, in collusion with appellant, inveigled Sujait Hosein Khan to his house, and prevailed upon him to declare that the purchase money of his share of the lands had not been paid; that quarrels and disputes followed, which were carried into the foujdaree court, by which Sujait Hosein Khan was maintained in possession and respondent was referred to the civil court; that Sujait Hosein Khan died; that Imam Ali is since dead; but an action had been brought against the heirs of Sujait Hosein Khan, Imam Ali, and Sukhawut Hosein the farmer, (appellant,) for possession, and, on the 20th December 1837, a decree was passed in respondent's favor, which, on the 3d October 1838, was affirmed, on appeal, by the Sudder Court; that, in that case, Imam Ali and Sukhawut Hosein (appellant) denied any previous occupancy, and their costs in the case were made payable by respondent who was

directed to sue for such arrears of rent as he might consider due; that the farmer (appellant) has not paid any rent from 1238 F. to Phagoon 1245 F. though he has, throughout, been in possession of Fatima Begum's share without challenge from any one; that the possession of Sujait Hosein Khan, upheld in the foujdaree court, was no bar to the farmer's (appellant's) occupancy, as it was his right as *malik* (proprietor), that was upheld there; that, therefore, respondent sues for the rents due from 1238 to the 1st of Phagoon 1245 F. at an annual jumma of 1,751 Sicca rupees, principal and interest, up to the latter date, being Company's rupees 24,585-12-5, due by the heirs of Imam Ali, by the heirs of Sujait Hosein Khan, and by Sukhawut Hosein, (appellant.)

To the above, Sukhawut Hosein (appellant) answered, that it was true he had taken the lease of the lands; but that he had never obtained occupancy of them as farmer, nor indeed had Gour Bukhsh (respondent) got possession of them himself; that, when the lease was settled, an *ikrarnameh* had been executed, under which all expenses attending the attainment of possession was to be borne by respondent, who was bound to refrain from any demand of rent till appellant's occupancy should be established. The other defendants denied all concern or connexion with the matter at issue.

On the 30th December 1842 (as before noted) respondent was nonsuited by the principal sudder ameen, on the ground of his having admitted in the foujdaree court, that Sukhawut Hosein (appellant) had paid up his rents to 1239 F. for which rents, however, he now sued; because, nothing was filed defining the extent or amount of the share of Fatima Begum; because, the *ikrarnameh* filed, agreed to the payment by him of costs which had not been deducted, nor had the payments acknowledged for 1238-9 F.; because, respondent had not, as he ought to have done, claimed the whole rent of the whole of the lands for 1240 F.; and for 1241 F. had not distinctly fixed on equitable rate of rent for the share of Fatima Begum, and as regarded that of Sujait Hosein Khan, had not, after the deductions agreed to, sued those who had rendered themselves responsible by an unauthorized interference with the collections.

In conformity with this, respondent brought two separate actions; this (No. 231) against the heirs of Sujait Hosein Khan, one Umjud Ali (a party concerned in the transactions before related or alluded to,) and the farmer Sukhawut Hosein, the claim being for the rents of the 5d. 17c. 16b. share of Sujait Hosein Khan; and another (No. 232) which will be hereafter noticed.

The decree in the first of these (No. 231) is as follows: 'From the *ikrarnameh* dated the 5th Cheyt 1238 F. it appears to be established that the lands (in question) comprehending 20 villages, were let in farm by Gour Bukhsh Sing (respondent) to Sukhawut Hosein (appellant); but the occupancy of the farmer and collections on his part, are not proved to have taken place antecedently to 1243 F.

The collections thenceforward, however, up to the middle of 1245 F. are deposed to and proved by witnesses, on the 9 annas' share of the estate: they have also deposed to collections by others; but that is the farmer's affair: he must be regarded as the person responsible to the plaintiff (respondent.) It is therefore just and proper that, from 1243 to the end of the first half of 1245 F., the rents be decreed, which they accordingly are to the amount of Company's rupees 4,324-1.'

This is the decree now before the Court in appeal; and all that will be added, is, that the possession denied by the farmer (the appellant) is not only established by the testimony of witnesses, but by a petition presented by himself to the revenue authorities, after the resumption of the lands by Government, praying for a settlement on the express ground of past occupancy.

I affirm the decree of the principal sudder ameen, with costs payable by appellant.

THE 29TH JULY 1846.
PRESENT:
R. H. RATTRAY,
JUDGE.

CASE No. 232 OF 1845.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Bhagulpore, Mohummud Majid Khan, June 17th 1845.

SYUD SUKHAWUT HOSEIN, APPELLANT, (DEFENDANT,)

versus

GOUR BUKHSH SINGH, *alias* SUDDUN LAL, RESPONDENT, (PLAINTIFF.)

Wukeel of Appellant—Gholam Sufdur.
Wukeel of Respondent—Aftuboodeen.

THIS suit was instituted by respondent, on the 18th January 1844, to recover from appellant the sum of Company's rupees 7,873-15-6-8, principal and interest, being arrears of rent on certain portions of mouzah Shahpore and others, altogether twenty villages, in pergunnah Soorijgurh, from 1240 to the middle of 1245 F.

This is the second suit, 'No. 232,' mentioned in No. 231, as having been separately brought by respondent, under the order of the 30th December 1842; and was for the rents due on the share, purchased by him, of Fatima Begum, and leased to appellant, as before stated.

The evidence and judgment in both cases were the same, the amount adjudged only differing; the sum decreed in the present case being Company's rupees 2,335-5-15. The decree is affirmed on the grounds on which it was passed (as before set forth,) with costs payable by appellant.

THE 30TH JULY 1846.
PRESENT:
R. H. RATTRAY,
JUDGE.

CASE No. 238 OF 1845.

Regular Appeal from a decree passed by the Additional Principal Sudder Ameen of Patna, Mohummud Râfek Khan, March 19th 1845.

RAJAH HET NURAIN SINGH, APPELLANT, (DEFENDANT,)

versus

GOVIND PURSHAD, MANAGING AGENT OF GOVIND RAM MISR, DECEASED: HIS HEIR, GOOPEE NATH MISR, RESPONDENT, (PLAINTIFF.)

Wukeels of Appellant—Pursun Komar Thâkoor Raee Buhadur and Hâmid Russool.

Wukeels of Respondent—Ameer Ali and Abbas Ali.

THIS suit was instituted by respondent, on the 21st January 1843, to recover from appellant, and his brother Mōd Nurain Singh, Company's rupees 17,608-10, principal and interest, as per account, which exhibits a balance, to the amount claimed, due by the late Maha Rajah Mitrjeet Singh, their father, to the house of respondent.

It does not appear necessary to enter into any detail of the proceedings in this case. The defendant Mōd Narain acknowledged the debt; and, as successor to a seven annas' share of the late Rajah's estate, paid in Company's rupees 7,703-10, his proportion of it: the remainder was proved by the books of account, attested as correctly kept by the most respectable merchants of the place, and decreed against appellant to the amount of Company's rupees 9,904-13-9.

The objections to this judgment were altogether technical, and have been rejected as futile and unworthy; and the decree of the lower court is affirmed, with all costs payable by appellant.

THE 30TH JULY 1846.
PRESENT:
A. DICK,
JUDGE.

CASE No. 205 OF 1844.

Special Appeal from the decision of the Additional Principal Sudder Ameen of Hooghly, Maeenooddeen Sufdur.

TARA MUNNEE DASEE, WIFE OF MUDOO SOODUN DUTT, APPELLANT, (PLAINTIFF,)

versus

MOTEE BUNEEANEE AND HEERA BUNEEANEE, RESPONDENTS, (DEFENDANTS.)

Suit laid at Company's rupees 293-5-4, value of a house.

The appellant claimed the house in question, as heir of her mother who, she asserted, had purchased it; the respondents, her sisters, having become outcasts, being common prostitutes, and therefore incapable of inheriting. The respondent, Motee, answered, that the house was purchased by herself in her mother's name; and further, that their mother had herself become an outcast by prostitution, and that she, and Heera, lived with their mother; consequently the appellant had no right to inherit. The respondent, Heera, answered that the house belonged to Motee. The appellant, in reply, denied that her mother had become a prostitute, and therefore she was the sole heir.

The case was first tried by the moonsiff of chowkey Hooghly, who decreed the claim. On appeal, the additional principal sudder ameen, after taking a bywustah from the pundit of the zillah, reversed the decision of the moonsiff and dismissed the claim. He considered the prostitution of the mother proved, and her living with her two prostitute daughters, the respondents, and having all things in common with them; and as the bywustah declared that, in such a case, the two outcast daughters alone could inherit, he decreed accordingly.

The special appeal was admitted by Mr. Reid, in these words: "On account of the novelty of the point mooted, I think it should be decided by this Court, viz: whether of three daughters of an outcast mother, (excommunicated because she lived by prostitution,) the defendants, who are also prostitutes, or the plaintiff, who is not an outcast and lives respectably with her husband and children, is her heir. The principal sudder ameen gave the property of the prostitute mother to the prostitute daughters. This seems to me contrary to Hindoo law."

Judgment.

To ascertain the Hindoo law on the point mooted, the Court put the following question to the pundit of the Sudder Court: "If a Hindoo woman, who is an outcast, in consequence of living by prostitution, die, and leave three daughters, one, a married woman, and mother of several children, and respectable; the other two, prostitutes, who lived with the outcast mother, and had all things in common with her, which will inherit the mother's property?" The pundit replied: "The two prostitute daughters alone inherit whatever the mother may have left; because the relation of the married and respectable daughter to the outcast mother has been severed."

The Court therefore confirm the decision of the additional principal sudder ameen, dismissing the special appeal with full costs.

To the Civil Authorities in the Extra-Regulation Provinces, viz.

The Commissioners of Assam, Arracan, and Tenasserim, the Governor General's Agents in Hazaribagh and the Cossya Hills, and the Superintendent of Cachar.

The 20th March, 1846. *Special appeals from Extra-Regn. Provs.*

I am directed by the Court to communicate to you the following rule, regarding the admission of special appeals from the province under your control to the Sudder Dewanny Adawlut, which, as you will perceive from the accompanying copy of the orders of the Government, No. 529, of the 18th instant, and its enclosure, has been sanctioned by the Supreme Government.

Rule.

Under the spirit of Act III. 1843, no special appeals are to be admitted from the decisions of the authorities in the Extra-Regulation provinces without the sanction of the Court. Nevertheless in order to promote facility of access to the Court, applications for special appeals may be presented to, and received by, the local authorities, within the prescribed period of three months, to be transmitted, with the proceedings of the courts of first and second instance, to the Sudder Dewanny Adawlut; and it shall not be obligatory on the appellants to appoint vakeels in such cases till after notice given to the appellants of their appeals having been admitted.

From the Under Secretary to the Government of Bengal to the officiating Register of the Sudder Court, dated the 18th March 1846.

With advertence to your letter No. 1913, of the 26th December last, I am directed to forward, for the information of the Sudder Court, and for communication to the authorities in the Extra-Regulation Provinces, the accompanying copy of a letter, No. 186, of the 28th ultimo, from the Secretary to the Government of India in the home department, conveying sanction to the new rule proposed by the Court for the transmission of special appeals.

From the Secretary to the Government of India to the Secretary to the Government of Bengal, dated the 28th February 1846.

I am directed to acknowledge the receipt of Mr. Under Secretary Turnbull's letter No. 197, dated the 4th instant, with original enclosures, relative to the operation of Act III. of 1843, in the Extra-Regulation Provinces, and in reply to state that, for the reasons therein assigned, and in compliance with the recommendation of the Honorable the Deputy Governor, the President in Council sanctions the adoption of the new rule proposed by the Court of Sudder Dewanny Adawlut for the transmission of special appeals from those territories.

To the Civil Judges.

The 5th June, 1846. *Commission under Act VII.* 1841.

The Court publish, for general information, an amended translation of Form No. 4 of Commission, prescribed for use, under Act VII. 1841, by the Circular Order No. 185, 11th February 1842. The zillah judges, who may have occasion to use the form abovementioned, are requested to make use of that drawn up in English.

৪ নম্বর।

কলিকাতার কোর্ট আফ রিকোএষ্টের শ্রীযুত কমিসনর সাহেব বরাবরেষু।

যেহেতুক উক্ত মোকদ্দমার উক্ত তারিখের হুকুমনামাতে ১৮৪১ সালের ৭ আইনের বিধির অনুসারে অমুক স্থান নিবাসি অমুক এবং অমুক ব্যক্তিরদিগের আপনার আদালতে সাক্ষ্য লইতে হুকুম হইল অতএব আপনারদের অথবা আপনারদের কোন এক জনার প্রতি আদেস হইতেছে যে এই কমিসনের সঙ্গে গাঁথা লিখিত জিজ্ঞাসার অনুসারে অথবা আদালতের রুবকারির যে চুম্বক ইহার সঙ্গে গাঁথা আছে তাহার নির্দ্দিষ্ট বিষয়ের অনুসারে উক্ত আইনের ৪ ধারার নিরূপিত মতে সপথ অথবা প্রতিজ্ঞাক্রমে ঐ সাক্ষ্যদের সাক্ষ্য ও জোবানবন্দি আপনারা লইবেন এবং ঐ উভয় বিবাদির অথবা তাহারদের মোখ্তারেরা উপস্থিত হইলে তাহাদের সাক্ষ্যতে ঐ সাক্ষিরদের জোবানবন্দি লইবেন এবং নির্দ্দিষ্ট বিষয়ে তাহারা ঐ সাক্ষিদিগকে জিজ্ঞাসাবাদ করিতে পারিবেক পরে আপনি ঐ কমিসনের সনদ এবং "ইহার সঙ্গে যে লিখিত জিজ্ঞাসা গাঁথা আছে তাহা এবং"* তাহার বিষয় ঐ সাক্ষিদের জোবানবন্দি এই আদালতে আগামি অমুক মাসের অমুক তারিখে বা তাহার পূর্ব্বে ফিরিয়া পাঠাইবেন।

আমার দস্তখৎ এবং এই আদালতের মোহর অমুক সনের অমুক মাসের অমুক তারিখে দেওয়া গেল।

মোহরের স্থান শ্রী অমুক

* যখন লিখিত জিজ্ঞাসা না পাঠান যায় তখন এই চিহ্নের " " মধ্যের কথা দিতে হইবেক না।

To the Civil Judges.

The 17th July, 1846. *Examination for the office of Pleader.*

The Court are pleased to publish, for general information, the annexed resolution this day passed by them, regarding the examination of candidates for the office of pleader in the Company's courts.

Resolution.

With reference to the provision of Section 4, Act I. 1846, that no person shall be admitted a pleader in any of the courts of the East India Company, unless he have obtained a certificate, in such manner as shall be directed by the Sudder Courts, that he is of good character, and duly qualified for the office, the Court resolve as follows.

1. No person shall be admitted to an examination, with a view to his qualifying as pleader in any of the courts of the East India Company, without presenting the testimonials as to character and acquirements, required from candidates for moonsiffships.

2. The divisional committees for the examination of candidates for moonsiffships, shall form a committee of examination for passing candidates for pleaderships in any of the civil courts within the division, and shall hold an examination on the 1st February of each year. The judge, magistrate, and principal sudder ameen, in each zillah, shall, in particular cases, and with the previous sanction of the Sudder Dewanny Adawlut, form a similar committee of examination for passing candidates at any other time than that fixed for the annual examination.

3. A system of marks shall be adopted, and the value of all the questions shall be assumed at 100. Such candidates as shall not obtain 60 of these shall be rejected, while those who get 60 and not more than 75 shall receive a certificate to enable them to practise in a moonsiff's court; the attainment of not less than 75, nor more than 85 marks shall entitle the candidate to a certificate as pleader in the court of sudder ameen, and of more than 85 marks to a certificate of qualification as pleader in that of the principal sudder ameen and judge.

4. The holder of a certificate as a pleader in an inferior court, may by obtaining the requisite number of marks, at any subsequent examination, receive a certificate to practise in such court of a higher grade, as the number of his marks may entitle him to.

5. The holder of a certificate to plead in a higher court shall be eligible for the office of pleader in a lower court on application.

6. A certificate granted in one district shall entitle the holder of it to obtain a pleadership in another district in the grade of court for which he may have passed.

7. Persons, who, being in possession of diplomas, are eligible for the office of moonsiff, but not in employment as such, shall be entitled on application to obtain a pleader's certificate to practise either in the Sudder, or in any of the zillah courts. But the Courts of Sudder Dewanny Adawlut may admit to practise as pleaders before them, all such persons as may satisfy them that they possess the necessary qualifications for the office.

8. Rules 2,* 3, 5, 6 and 10,† dated 4th August 1840, and rules 1, 2, 3, 6, and 7, with exception of the last clause beginning "and at the same time forward, &c." and 9‡ and 14 of the rules subsequently issued, (vide Government Gazette, dated 16th March 1841, and pages 125-127, Volume III. Circular Orders, Sudder Dewanny Adawlut,) shall be applicable to the examination of candidates for pleaderships.

* See Cir. Or. No. 174, dated 10th December, 1841.
† See Cir. Or. No 183, dated 28th January, 1842.
‡ See Cir. Or. No. 175, dated 17th November 1841, relative to rule 13.

To the Civil Judges.

The 17*th July*, 1846. *Rules for Sales under Act IV.* 1846.

The following rules relating to the execution of decrees under Act IV. 1846, passed with the sanction of the Supreme Government, are published for general information.

2. The district judges are requested to communicate to the moonsiffs the purport of the annexed extract (paragraph 6) of the orders of the Supreme Government, No. 469, dated 4th instant:

"The tullubana for peadas and costs of process are in the first instance advanced by the decree-holder, and finally deducted out of the proceeds of the sale, and this is the proper course. The reports to the judges from the moonsiffs' courts should be sent as far as possible by the public dawks: if peadas are required, they must be paid at the judge's court and charged in contingent bills."

Rules.

Act IV. 1846, Section 3, provides "that the rules now in force for the attachment and sale of such real property as the courts of civil judicature are now authorized to sell, in satisfaction of decrees, without application to the revenue authorities, shall apply to attachments and sales made under the authority of this Act." Those rules are to be found in Regulation VII. 1825. They are to be strictly attended to, and special care taken that the preliminary process therein prescribed for bringing any property to sale be duly observed The following rules, therefore, drawn up under the authority conveyed in Section 11 of Act IV. 1846, relate only to such points of detail in the conducting of sales as neither the Act itself, nor Regulation VII. 1825, provides for.

I. Every sale of landed property to be made under the authority conveyed in Section 3, Act IV. 1846, shall be conducted by the officer empowered to execute the decree in satisfaction of which the sale is proposed to be made, or under his directions; and the preliminary processes shall all be issued by the said officer.

II. Sales shall ordinarily be advertised to take place at the *cutcherry* of the officer under whose order the same may be directed; but when a sale is about to be made under the orders of a moonsiff in the interior, and he may think it expedient that the sale should take place at the sudder station of the district, he shall issue the prescribed processes to that effect, and communicate the same by *roobacarry* to the judge, transmitting therewith copy of the *lotbundy* exhibiting all the particulars of the intended sale. In such cases the judge will either instruct his *nazir* to preside at the sale, or do so himself. In either case the result shall be communicated to the moonsiff.

III. If the property proposed to be sold in execution of a decree by a moonsiff should not be situated within such moonsiff's jurisdiction, but should be situated within the jurisdiction of another moonsiff in the same district, then the moonsiff passing the decree shall transmit the sale papers to the moonsiff within whose jurisdiction the property may be situated, with a roobacarry requesting him to realise the amount due on the decree. The latter shall then proceed to effect a sale of the property in the same manner as if the decree had been passed by himself. The result shall be communicated to the moonsiff ordering the sale to be made.

IV. A form of the *lotbundy* to be used in all cases of intended sales, is annexed, marked A.

V. The first Monday in every English month shall be the day fixed for sales under Act IV. 1846, to take place, care being taken, in issuing the proclamation, (form of which, marked B, is annexed,) required to be made of intended sales, to allow in every instance the full period of thirty days, exclusive of the date of such proclamation and of the day of sale; so that when notice of an intended sale is to be issued, should the first Monday in the ensuing month fall within thirty days, the sale must be fixed for the first Monday in the following month. In any instance should the first Monday in the month be an authorized holiday, the sales shall commence on the first court day ensuing.

VI. Should the sales advertised to take place on a particular date, prove in any instance, more than may conveniently be concluded on the day fixed, the circumstance shall be recorded by the presiding officer; and in such cases the sales shall be continued from day to day, till the whole shall have been disposed of.

VII. The same course shall be adopted when the presiding officer may be unable through indisposition or other unavoidable

cause to proceed with the sales on the day fixed. In such cases, the officer under whose orders the sales may have been directed to be made, may either direct some of his subordinate officers to conduct the sales, or he may adjourn them from day to day till he himself shall be able to preside.

VIII. Should more than a mere adjournment from day to day be requisite, and it be found necessary to postpone a sale to a subsequent date, due notice, viz. at the court where the sale is to be made and at the judge's office, shall be given of the day fixed for the postponed sale to take place.

IX. Should it be found necessary to postpone a sale through any error discovered in the *lotbundy*, or advertisement, whether as regards the description given of the property proposed to be sold, or, if the property consist of land paying rent, of the *jumma* assessed thereon,—in such case, the errors being corrected, process of sale must issue again *ab initio.*

X. All persons shall be permitted to bid for the property exposed to sale without previous question. When the bidding* has ceased, for which due time shall be allowed, the officer presiding shall call on the highest bidder to pay down the deposit required under Section 5 of the sale act. On complying with this requisition, the purchaser shall be allowed fifteen† days from the day of sale, reckoning that day as one of them, to make good the balance‡ of the purchase money. On payment of the same within the prescribed time, the presiding officer shall grant the purchaser a receipt for the sum total, and forthwith remit the amount to the treasury of the judge of the district to which he is himself subordinate.

XI. Should any objections be made against the sale, within the period allowed for such representations, viz., within one month from the day of sale, the officer by whom the sale may have been ordered shall dispose of the same with all convenient despatch. If, however, no objections should be preferred within the prescribed period, or, if those preferred as above should be overruled, the officer by whom the sale may have been ordered shall declare the sale to be concluded, and immediately grant a bill of sale to the purchaser, agreeably to the form C, annexed hereto.

* Should disputes arise as to who may be the highest bidder, before the lot has been distinctly knocked down, the previous bids shall go for nothing and the sale shall be commenced again *de novo.*

† If the fifteenth day should be a Sunday, or a close holiday, then the purchaser shall be deemed to have paid the purchase money within the prescribed time if he pay it by sunset of the first court day thereafter ensuing.

‡ Should this balance not be paid within the prescribed period, the notification of resale required by Section 5 of the Act, shall be an advertisement at the *cutcherry* of the officer holding the sale, announcing the property for resale on the first regular sale day in the ensuing month.

XII. Before disposing of the purchase money, due attention must be given to the Circular Orders No. 1 of the 6th June 1828,* No. 16, 2nd January 1836, and No. 42, 26th January 1844. When the period for disposing of it shall have arrived, the expence incurred by the party in bringing the property to sale shall first be deducted from the proceeds of sale, and paid to him or her. The residue, after the further deductions authorised to be made from the proceeds of sale in the subsequent rules, shall then be disposed of according to the rules in force applicable to such cases.

XIII. When sales may be conducted by persons other than those who may have ordered the same, as for instance under rules II. and III., the duty of the officer conducting the sale shall be purely ministerial, and he shall not take cognizance of any objections which may be urged against the intended sale, nor shall he postpone the sale except at the special requisition of the officer who may have directed the sale to be made.

XIV. The foregoing rule is not intended to apply to cases in which the property proposed to be sold may be situated in a district other than that to which the court passing the decree, in execution of which the property is proposed to be sold, appertains. In all such cases the rules prescribed by Circular Orders Nos. 83 and 167, dated 8th May 1840, and 24th September 1841, will remain in force; but there seems no good reason for extending those rules to cases in which one moonsiff may be employed to sell under the requisition of another moonsiff, both being subordinate to the same judge, and consequently under the same appellate jurisdiction.

XV. No sale shall commence before noon, nor after sunset.

XVI. When sales are made by or under the directions of a principal sudder ameen, sudder ameen, or moonsiff, the result of the proceedings shall be submitted to the judge of the district at the close of the day, in the form annexed marked D. At the close of the fifteenth day, a report shall be transmitted to the judge, simply announcing whether the amount purchase money has been paid in full or not The judges will be careful to see that these reports are regularly submitted and within the time prescribed.

XVII. Two registers shall be kept by every court, according to the forms hereto annexed, marked E and F, the one of property to be sold, the other of property sold. In the latter register, sales made, but not completed by payment in full of the purchase money, are not to be entered; but payment in full having been made, they are to be entered immediately, without reference to their subsequent confirmation, or otherwise.

XVIII. The registers prescribed in the preceding rule shall be kept in two strongly bound volumes, the pages in each being numbered, and at the close of the volumes the judge

* Modified by Circular Order No. 26, dated 11th August 1843.

shall certify under his own signature the number of pages contained in each volume. Every entry in these registers shall be authenticated by the presiding officer for the time being of the court to which they appertain; and the judges will avail themselves of every favorable opportunity of inspecting these registers, and seeing that they are carefully and properly kept up.

XIX. The bill of sale to be granted to a purchaser under rule XI. shall be drawn out on stampt paper according to the amount paid for the property, and the cost price of the stamp shall be paid by the purchaser, according to the rule in note to Exemption No. 19, Schedule A. Regulation X. 1829; and the said bill of sale shall be deemed in any court of justice sufficient evidence of the title acquired thereby, being vested in the person or persons named therein from the date specified.

XX. Simultaneously with the grant of this bill of sale to the purchaser, the officer under whose orders the sale may have been made shall affix a proclamation, in the language of the district, in his *cutcherry*, intimating, in the terms of the bill of sale, the succession of the purchaser to the rights and interests of the party whose property has been sold: a similar proclamation shall be sent to the *cutcherries* of the *darogahs* of police within whose jurisdictions any part of the property sold may be situated, and a third to the *cutcherry* of the *zemindar* in whose estate the property sold may be situated: and no other process for putting the purchaser in possession shall be necessary, and any disputes which may arise as to the extent of the property sold, or of the rights and interests therein heretofore belonging to the party to whom the purchaser has succeeded, shall be heard and determined as a regular suit under Regulation IV. 1793, and not otherwise; it being clearly understood that sales under Act IV. 1846, convey to the purchaser no right or privilege which was not vested in the person of the late proprietor. Such rights or privileges, therefore, becoming the subject of dispute, can be determined only by the institution of a regular suit.

A.

Register of Property advertised for sale in execution of decrees of court under Act IV. of 1846, *this* 26*th February* 1851, *corresponding with the* 14*th Falgoon* 1268 *B. E.*

Agreeably to the orders contained in the proceeding of the judge, principal sudder ameen, &c. of this district, dated 3d February 1851, and to the notice issued under this date, in the case of Gungagobind Chuckerbutty, plaintiff, *versus* Manoollah Sheikh, defendant, No. 357, the undermentioned property will be sold by public auction for the realization of the amount due in that case, on Wednesday the 27th March 1851, corresponding with the 15th Chyte 1268 B. E.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.
No. of the lot.	Name of mehal.	Name of pergunnah.	Name of district.	Proprietor's name recorded in the collector's office.	Sudder jumma of the entire mehal.	Name of zemindar.	Zemindar's receivable jumma.	Name of debtor.	Amount to be realised.	REMARKS.
										In this column (11) it should be recorded distinctly, that the rights and interests only of the person or persons answerable for the amount to be recovered are to be sold. Also any information regarding the mode in which the jumma of dependent talook, &c. may have been ascertained.

B.

Notice of Judge, Principal Sudder Ameen, &c. in Zillah 24-Pergunnahs, under Act IV. of 1846.

Agreeably to the orders contained in the proceeding of the judge, principal sudder ameen. &c. of this district, bearing date 3d February 1851, in the case of Gungagobind Chuckerbutty, plaintiff, *versus* Manoollah Sheikh, defendant, No. 357, the undermentioned property will be sold by public auction at the *cutcherry* of at noon, on Wednesday the 27th March 1851, corresponding with the 15th Chyte 1268 B. E., for the realization of the amount below specified. Dated 26th February 1851, corresponding with the 14th Falgoon 1268 B. E.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.
No. of the lot.	Name of the mehal.	Name of the pergunnah.	Name of district.	If a Government mehal the name of the recorded proprietor.	Sudder jumma of the entire mehal.	If a dependent talook within whose zumeendaree.	Rent payable to the zumeendars.	Name of the person or persons answerable for the amount.	Amount to be realised.	REMARKS.
										In this column (11) it should be recorded distinctly, that the rights and interests only of the person or persons, answerable for the amount to be recovered, are to be sold. Also any information regarding the mode in which the jumma of dependent talook, &c. may have been ascertained.

C.

I make it known that, agreeably to Act IV. of 1846, Ramguttee Biswas has purchased at auction the rights and interests of Ruhmut, son and heir of Munoollah, in and appertaining to the *hismut* of *mehal* Radhanagore, and that his purchase has taken effect on and since the 27th of March 1851. Dated 19th April 1851, corresponding with the 3d of Chyte 1268 B. E.

Official Signature of the
Officer holding the Sale.

D.

Report of Sales made this day, in which the deposit has been paid in, in conformity to the orders of ———— .

1.	2.	3	4.	5.	6.
Particulars of the property sold.	Decree in execution of which the property has been sold.	Names of purchasers.	Amount for which the property sold.	Amount deposited in part payment of the purchase money.	REMARKS.

E.

Register of Property advertised for sale in execution of decrees under Act IV. 1846.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.
No. of lot.	Particulars of property.	Date of ishtehar.	Date fixed for the sale to take place.	Parties to the decree, in execution of which the property is proposed to be sold.	Amount payable under the decree.	Objections preferred, or not, prior to the sale.	Objections when and how disposed of.	Sale when made.	Reference to page and number of register of sales made.	REMARKS.
								Note.—Columns 9 and 10 have been added to render the statement complete for general reference; they will only be filled up in the event of the property being sold and entered in register F.		*Note.*—Under this head explanation will be entered, in the event of no sale taking place, e. g. the amount due on the decree was paid in full, or the purchaser having made the required deposit failed to complete his purchase by paying the remainder of the purchase money within the required period, and the property has been re-advertised for sale.

F.

Register of Sales made in execution of decrees under Act IV. 1846.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.
Particulars of property.	Date of sale.	Parties to the decree in execution of which the property was sold.	Name or names of purchasers.	Amount of purchase money.	Objections preferred or not after the sale was made, by whom and date thereof.	Objection when and how disposed of.	Bill of sale given to the purchaser on	Reference to the register of proposed sales.	REMARKS.
									Note.—As explained in the rules, only such sales as may be completed by the payment in full of the purchase money are to be entered in this register; and in the event of such a sale being cancelled either on summary investigation of the objections preferred, or by the decision of a court of justice on the institution of a regular suit, a brief remark of the same is to be entered under the head of remarks.

To the Session Judges and Commissioners.

The 22d May, 1846. *Imprisonment for life, Act XIV.* 1844.

The Court are pleased to intimate that the rule prescribed by Circular Order, No. 130, dated 24th February 1843, that the session judges shall invariably recommend that a prisoner be sentenced to transportation for life instead of imprisonment for life, is no longer required to be observed, in consequence of the enactment of Act XIV. of 1844, which authorises a single judge of the Sudder Court to pass sentence of transportation beyond sea for life, against a prisoner recommended to be imprisoned for life. They however direct the session judges, when proposing a sentence of imprisonment for life in the Allipore jail, to record their reasons for not recommending one of transportation beyond sea.

To the Session Judges and Commissioners.

The 12*th June* 1846. *Witnesses summoned by the Sessions Court.*

The Court request that an entry be made, in the copy of the English calendar which, under the Circular Order, No. 187, 25th October 1844, is sent with all trials referred or called for, of the names of all witnesses, not named in the magistrate's calendar, whom the sessions court may have thought proper to summon and examine.

To the Several Criminal Authorities.

The 12*th June.* *Writs of Capias of the Supreme Court.*

Pursuant to the orders of Government, the Court publish, for the information of the criminal authorities, the accompanying copy of a correspondence regarding the nature of the assistance which magistrates are expected to afford sheriff's officers, entrusted with the execution of writs of capias issued by the Supreme Court against parties residing in the mofussil.

From A. Campbell, Esq., Magistrate of Darjeeling, to F. J. Halliday, Esq., Secretary to Government of Bengal, dated Darjeeling, the 29th April 1846.

I have the honor to request that you will procure for me the opinion of the advocate general on my proceedings as noted in the margin,* and such opinion as may guide me in deciding on any further steps that may be taken before me, in the matter, by the sheriff's bailiff, either with or without a "writ of assistance," or other process issued by the Supreme Court.

* Letter of sheriff's officer dated 27th April, with order thereon.
Letter of ditto dated 28th, with order thereon of the 29th.

2. I have grounded my proceeding on the absence of any sanction in the regulations to compliance with the sheriff's officer's requisitions, and on decisions of the Sudder Courts noted underneath.

1 Circular Order No. 765 dated March 8th 1833.
£ No. 800 dated 21st June 1833.
3 No. 636 dated 20th May 1831.

I have, &c.,
(Signed) A. CAMPBELL, *Magistrate.*

To A. Campbell, Esq., Magistrate of Darjeeling.

I have to request you will give me a posse of your police force to assist and protect me in the execution of my duty, in conveying ——————— under civil arrest to Calcutta.

DARJEELING, 27*th April*, 1846.
I have, &c.,
(Signed) W. GRANT, *Sheriff's Officer.*

ORDER.

If the sheriff's officer desires protection, he must make affidavit to his belief that such is requisite. Assistance in the conveyance of a prisoner under civil arrest is not directed by the Regulations.

DARJEELING, 28*th April*, 1846.
(Signed) A. CAMPBELL, *Magistrate.*

To A. Campbell, Esq., Magistrate of Darjeeling.

I am in receipt of your order passed upon my letter of yesterday's date, requesting the assistance and protection of your police force in the execution of my duty in conveying ——————— under civil arrest to Calcutta.

I have the honor to observe that I consider it necessary to call upon you for a police force to protect and assist me in the execution of

my duty in conveying ———————— under civil arrest to Calcutta, on account of the position I stand in with ———————— he having threatened to break every bone in my body if I went over to his house.

If you require an affidavit to the facts, I am ready (at any time you think proper) to give it.

I request the favor of your reply; and respectfully beg to call your attention to the sheriff's official letter of the 5th ultimo.

DARJEELING, 28*th April*, 1846. } I have, &c., (Signed) W. GRANT, *Sheriff's Officer.*

Sworn to before me this twenty-ninth day of April, one thousand eight hundred and forty-six.

DARJEELING, 29*th April*, 1846. } (Signed) A. CAMPBELL, *J. P. and Magistrate.*

Order on the letter of Mr. Grant, sheriff's officer, dated Darjeeling, 28th April 1846.

The magistrate does not consider the sheriff's letter to his address of the 5th March tantamount to a "writ of assistance" issued by the Supreme Court. He will not afford protection to the sheriff's officer in the invasion of premises; and the regulations do not authorise him to assist at all in conveying a prisoner under civil arrest to the sheriff.

DARJEELING, 29*th April*, 1846. } (Signed) A. CAMPBELL, *Magistrate.*

No. 882.

To T. B. Swinhoe, Esq., Solicitor to the Hon'ble East India Company.

I am directed by the Hon'ble the Deputy Governor of Bengal to transmit in original the accompanying letter, No. 84, of the 29th ultimo, with enclosures from the superintendent of Darjeeling, and to request that you will obtain the opinion of the Advocate General in the case therein alluded to.

2. It is requested that the original enclosures may be returned with your reply.

I am, &c.,
(Signed) A. TURNBULL,
Under Secretary to the Government of Bengal.

Fort William, the 13*th May* 1846.

OPINION.

Mr. Campbell seems to labor under considerable misapprehension as to the authority under which the sheriff's officer is acting.

The sheriff's letter is little more than an act of courtesy, important only as conveying notice to the magistrate, that his assistance may be required.

The authority under which the sheriff, or his bailiff in his place, is acting, is a writ of *capias* issued out of the Supreme Court on its common law side, directed to the sheriff and commanding him to seize the body of ——————— and to have it at a certain time and place before the Court, &c.

A writ of assistance, the execution of which the magistrate seems to admit he would be bound to aid, is a writ issuing out of the Supreme Court on its equity side, directed also to the sheriff, and commanding him to put a certain person into the possession of certain premises.

It seems to me that a magistrate in the mofussil is bound to aid the due execution of the former writ, upon precisely the same principle as that on which he is bound to assist in the execution of the latter. The only difference between them in respect of authority is, that whereas doubts may have existed heretofore as to the power of the Court to decree possession of lands in the mofussil, none has ever existed as to its power to take, either on mesne process, or in execution, the bodies of British subjects within the local limits of its jurisdiction.

Now upon referring to Mr. Advocate General Pearson's letter of the 21st of July 1820, which appears to have been ever since very properly acted upon, (see Circular Orders of the Sudder Dewanny Adawlut, Vol. II. No. 31, and Constructions by the Sudder Dewanny Adawlut and Nizamut Adawlut, Vol. II. No. 636, the last being one of the authorities referred to by Mr. Campbell,) it will be found that the obligation of the mofussil authorities to lend their aid to the execution of a writ of assistance does not depend upon the peculiar nature or terms of that writ, but upon the force of the 39th Section of the Charter of Justice and the analogy between the power of the sheriff to call for assistance under that section, and the power of a sheriff in England to call upon the *posse comitatus*.

Applying that principle to the present case, it seems to follow that whereas in England the sheriff, where assistance is required, is, in the execution of a *capias ad satisfaciendum, bound*, and is in the execution of a *capias ad respondendum, at liberty* to call upon the *posse comitatus*, so here if he has occasion to call upon the magistrate for assistance, the magistrate ought to render it.

That assistance ought of course to be confined to the legal execution of the writ; for instance, the police officers furnished by the magistrate ought not to aid the bailiff in breaking into a house, but they accompany him if he enter the premises without breaking in, and ought to prevent any breach of the peace when the arrest is made or rescue after it has been made.

I do not see that the obligation upon the magistrate extends so far as to make it necessary for him to furnish men to assist in the conveyance of the prisoner to Calcutta.

(Signed) JAMES WM. COLVILE.

May 15th, 1846.

To A. Campbell, Esq., Superintendant of Darjeeling.

I am directed by the Hon'ble the Deputy Governor of Bengal to acknowledge the receipt of your letter No. 84, of the 29th ultimo, with enclosures, and in reply to transmit, for your information and guidance, the accompanying copy of the Advocate General's opinion on the points therein referred.

I have, &c.,

(Signed) A. TURNBULL,

Under Secretary to Government of Bengal.

Fort William the 20*th May*, 1846.

To THE CRIMINAL AUTHORITIES.

The 10*th July* 1846. *Writs of Capias of the Supreme Court.*

PURSUANT to the orders of Government, the Court publish, for the information of the criminal authorities, the accompanying copy of the advocate general's further opinion on the subject of their Circular Order of the 12th ultimo, viz. the nature of the assistance which magistrates are expected to afford the sheriff's officers entrusted with the execution of writs of *capias* issued by the Supreme Court against parties residing in the mofussil.

OPINION.

My observations, regarding Mr. Campbell's supposed misapprehension of the sheriff's officer's authority, had reference to Mr. Campbell's proposition (which distinctly appeared in the papers before me) that he was not bound to give the aid required, because the writ was not a *writ of assistance.* It therefore seemed to be not wholly beside the question to show that, if the magistrate were bound to assist in the execution of the one writ, he was, by parity of reasoning, equally bound to assist in the execution of the other.

It now appears, though to the best of my recollection it did not appear from the former case, that the arrest has been effected; and, since no escape or rescue is mentioned, I conclude that the prisoner is still in custody. The simple question referred to me seems to be, is, under these circumstances, the magistrate to grant to the sheriff's officer, who is under apprehension of violence, a *posse* to assist in the conveyance of the prisoner to Calcutta? Mr. Campbell says that the

two last paragraphs of my former opinion *preclude* him from complying with the bailiff's requisition. I do not think they go quite so far as that: the last but one would rather imply the contrary, for the writ cannot be said to be fully *executed* until the prisoner is conveyed to Calcutta. The last states only that "in my opinion the magistrate is not *bound* to furnish men to assist, &c. &c.," not that he would act *illegally* in doing so. By the opinion expressed in that paragraph, I abide for the following reasons.

The obligation on the mofussil magistrates to assist in the execution of process issuing out of the Supreme Court, whether it be a perfect or an imperfect obligation, seems to arise out of the last clause in the Charter of Justice, which contains substantially the same injunction as that contained in the patent of assistance granted to sheriffs in England, and in which their power to raise the *posse comitatus* is supposed to be implied. (See Dalton's Office of Sheriff, pages 5 and 8.) Now, according to the unanimous opinion of the judges as delivered to the House of Lords in Miller *versus* Knox, 4 Bing. N. C. 574, the sheriff has power, even though there be only a show of intended resistance, to call upon such persons as are of proper age, *and fit and able to travel,* and especially ministerial officers, as constables, and the like, to assist him in the execution of the writ within the county, and such persons are punishable if they refuse to assist. It seems, however, very questionable whether this can be said to be the law of this country. In England the jurisdiction of the sheriff, and consequently the liability of those who are called upon to assist, is confined to the bounds of a county. Here the writs, which the sheriff of Calcutta executes, run through the whole of the vast province of Bengal, and it seems preposterous to contend that, in the absence of any express enactment and by the mere force of analogy, an individual at Delhie may be compelled to assist a sheriff's officer in the transport of a prisoner to Calcutta. Again, I am not aware that the obligation resulting, or supposed to result, from the last clause of the Charter has ever been enforced, or could be enforced by indictment or information, as the obligation to assist the sheriff might be enforced in England. Its performance therefore seems to depend mainly upon the instructions to be given by the Government to its magistrates and other subordinate officers; and though it would certainly not be very creditable to the Government of any country to permit the process of a competent court to be successfully defied, yet it seems rather too much to say that the Government is to undertake the expence of escorting persons taken on civil process from one end of the province to the other, or, supposing it indemnified against the expence, that it is to denude for such purposes a district of its requisite police force.

In the particular case in question, there seems to be no appre-

hension of a forcible rescue by numbers, but a mere apprehension of violence on part of the prisoner. I confess I cannot see why in such a case, the bailiff should not take steps before the nearest justice of peace to have his prisoner bound over in heavy penalties to keep the peace towards him, or why he should not himself hire a sufficient number of fellows to prevent the escape of one man, however powerful and violent he may be.

I therefore repeat my opinion, that the magistrate is not bound to furnish a *posse* of men to assist in the conveyance of the prisoner; but I cannot think that he would incur any *legal* responsibility in so doing, should he think that there is any thing in the special circumstances of the case which requires such extraordinary assistance. And if I were to venture to lay down any general rule of conduct for the guidance of magistrates in such cases, it would be this, that when required so to do, they take such measures as may be necessary to insure the peaceable execution of legal process within the limits of their own district or local jurisdiction, not travelling beyond it. Such a rule, if applied to the present case, would induce Mr. Campbell to provide for the peaceable removal of ——————— from Darjeeling, but not for his transport to Calcutta. I have given my opinion at this length, because, from all I can learn, the case, in all its circumstances, is a novel one.

(Signed) JAMES WM. COLVILE.

June 16*th*, 1846.

TABLE OF CASES.

Regular Cases.

Applications for Special Appeal.

Errata in the July Decisions.

Page 266, line 7, *for* 19th *read* 9th.

293 line 7 from below, *insert* Kishen Munee Debea.

THE 3D AUGUST 1846.
PRESENT:
W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 99 OF 1845.

MUSST. DYA MAYE DEBBEA AND OTHERS, APPELLANTS, (PLAINTIFFS,)

versus

COLLECTOR OF ZILLAH BHOLOA; AND RANEE KUTYANEE, MOTHER OF RAJAH BABOO; AND DOARKANATH THAKOOR, RESPONDENTS, (DEFENDANTS.)

CLAIM to reverse the sale of pergunnah Bholoa, and to obtain possession of part of the same with mesne proceeds: laid at rupees 24,52,306-10-9.

The plaintiffs claimed the reversal of the sale of this estate,—which took place for the recovery of arrears of Government revenue, on the 9th February 1835,—on various grounds. The defendants pleaded the provision of clause 1, section 27, Regulation XI. 1822, as barring the admission of the claim; they further stated that Mr. Wise and Doctor Lamb were sharers, or held an interest in the estate, though their names did not appear in the case.

On the 13th December 1844, the judge of Tipperah, Mr. Skipwith, gave judgment to the effect that, under the Regulation above cited, the plaintiffs were incapacitated from contesting the validity of the sale in question. The grounds of this decision are thus recorded:

"The words of clause 1, section 27, Regulation XI. 1822, are, that 'no person shall be entitled to contest the validity of a sale after having received any portion of the purchase money; nor shall any part of the sale proceeds of any estate be liable for the debts of the late proprietor, whilst the validity of the sale may be under contest,' &c.

"Previous to the institution of a suit to contest the sale, the surplus proceeds of an estate are liable to be applied to the satisfaction of decrees, and when so applied an action is barred. In the present case the plaintiffs petitioned only the collector to keep the surplus proceeds of the estate in deposit, till he should have received orders of Government upon a petition submitted by them. The Government order was that they should, if they had any claim, bring an action in the civil court; and this order was dated in the year 1836.

"In the year 1837, the surplus proceeds of the estate were sent for by the civil judge, and applied to the satisfaction of various decrees in the year 1838; and although the plaintiffs were invited

by a notice to make any objections to such an arrangement, as they might think proper, none were made.

"The first suit contemplated by section 27, was not made till the 17th September 1839.

"Besides this, Bhairo Anund Rai and Hurrish Chunder Rai, two of the plaintiffs, petitioned, the one the commissioner, and the other the court of dewanee in this zillah, for the application of the surplus proceeds in satisfaction of decrees against them, and this was done; and although they did not receive the money themselves, it was applied for their benefit."

Under these circumstances the judge considered the action barred by clause 1, section 27, Regulation XI. 1822, and dismissed the claim.

On 18th April 1845, an appeal was brought in this Court by the plaintiffs, with the exception of two sharers, Hurrish Chunder and Bhairo Anund, who were not parties to the appeal.

BY THE COURT.

The decision of the judge turns exclusively on one point, whether the present action is barred by section 27, Regulation XI. 1822, and it is to that point only that the Court must direct its attention. If the action is not barred, the case must be referred for trial on its merits.

It seems that the estate sold was the property of various sharers, who were entitled to receive shares of the surplus sale proceeds in proportion to the extent of their shares in the estate. Of these sharers one Ranee Kutyanee has received a large portion as her share, which was paid to her by the judge under orders of the Court of Sudder Dewanny Adawlut. Two other sharers, Hurrish Chunder and Bhairo Anund, gave in petitions requesting that portions of the surplus proceeds might be applied to the satisfaction of certain decrees. The appellants deny that they were so applied; but this is immaterial, the petitions sufficiently prove their acquiescence in the application of these funds to that purpose. The whole of the rest of the surplus proceeds, it is admitted, were paid away by the judge and other courts in satisfaction of various decrees. The appellants deny the authority of the judge to apply the funds to this purpose; but as it seems that the validity of the sale was not then under contest before the civil authorities, and that notices were issued to several of the sharers to come forward and offer any objections they might wish to set forth, without eliciting any such opposition; and further, that these orders of the judge were never appealed, though open to appeal; I cannot now question the correctness of these orders, but must consider them just and proper, and in the light of payments for the benefit of the sharers to whose shares they referred.

The case, therefore, stands thus: one sharer received her share, two requested that the shares might be applied to the satisfaction of

claims, and the shares of the rest were paid in satisfaction of claims against them by order of court. It appears to me that all these applications of the money were made legally for the benefit of the parties holding the shares; and that the present action is consequently barred by clause 1, section 27, Regulation XI. 1822, and this opinion is supported by the only precedent which has been adduced bearing on the case, viz. Bustee Rai *versus* Collector of Sarun, decided 1st March 1836 in this Court; which is to the effect that in a similar sale, some sharers having received their shares of the surplus proceeds, and the shares of others having been paid away by order of court in satisfaction of decrees, though contrary to their wishes, the latter cannot question the validity of the sale.

On the above grounds the decision of the judge appears to me correct, and it is hereby confirmed with costs of appeal against the appellants.

THE 10TH AUGUST 1846.

PRESENT:

A. DICK,

JUDGE.

CASE No. 105 OF 1844.

Regular Appeal from the decision of the Principal Sudder Ameen of zillah Mymensingh, Mr. C. Mackay.

SHEEOO CHURN GUNGOLEE AND OTHERS, APPELLANTS, (DEFENDANTS,)

versus

DAIA MAYEE DIBEEAH, RESPONDENT, (PLAINTIFF.)

Pleaders—Gholam Sufdar for Appellants, and Sree Ram Race for Respondent.

SUIT, laid at Company's rupees 7823-4-5, for possession on lands and effects.

The respondent founded her claim to the property in question, on its having belonged to her husband, deceased, and she being his heir, and having possessed it, and then been ousted from it by the appellants. Her statement is, that her husband's father gave by deed (hibahnameh) the lands in dispute to her husband, who during his lifetime was in sole possession, and she after his decease, he having authorised her to adopt a son, which she obeyed; that her husband had three brothers, and on the death of one of whom their heirs attempted, under Regulation V. 1799, to obtain possession of a portion

of the estate, but were referred to a regular suit, and her possession upheld; that they had never sued, but during her grief for the loss of her adopted son, had ousted her from the whole of the property.

The appellants replied, that the deed of gift was merely nominal to serve a purpose of the time; that they were about to sue in consequence of the orders passed in the above alluded to case, under Regulation V. 1799, when the respondent, to avoid the expenses of litigation, knowing their right, gave up to them their respective shares, and made over her husband's share to them for the purpose of liquidating debts left by him, several of which they had paid off.

The principal sudder ameen, Mr. Mackay, takes up the case, and, under section 10, Regulation XXVI. 1814, thus passes order: "Proper that from both parties proof of the claim and its denial be required, therefore plaintiff file his proofs of his claim, and defendant of his answer in one week." He then decides the case in the following words, without leaving a particle of proof on record, copied from the records of the cases which he had sent for and consulted.

"The point to be looked into in this case is, whether the plaintiff has been really dispossessed by the defendants of the lands, &c., to which she lays claim, or whether, as alleged by the defendants, the plaintiff made over her portion of the lands by a ruffanamah to the defendants on the condition that her husband's debts were to be paid by them.

"From a perusal of the papers in the case and the case referred to in this investigation, it appears to be clear that the plaintiff has been dispossessed by defendants of the talooka, &c., to which she lays claim, on the grounds that *her* husband was made sole proprietor thereof by habanamah executed by *his* father; and that, on a *claim* for these very lands having been once before preferred by the *present defendants and others* under Regulation V. 1799, the then *plaintiffs* were directed to prefer a *regular* suit, whilst the present *plaintiff* was allowed to continue in possession of the disputed lands, in which possession she continued till dispossessed by the defendants in this suit. On appeal of the summary suit above referred, the order therein passed was upheld in both the zillah and Sudder Courts; and moreover the defendants in this case (and the ancestors of some of them) never brought forward the action therein directed, besides the plea set up by the defendants of the plaintiff having relinquished her claim to the lands now claimed in their favor, in support of which they file a copy of a durkhast presented in court; yet I discredit its validity altogether, because, having gained her point in all the former decisions, it is not probable she would afterwards, without the slightest cause, give up her right in the manner stated in the alleged ruffanamah, produced by the defendants. For these reasons, as well as that Raujkishore, one of the defendants, has since appeared before me and filed a kubool-jowab, agreeing to give up what he has dispossessed the plaintiff of, 'I am of opinion plaintiff's claim

should be decreed in her favor, with wasilaut thereon from the date of institution of this action to date of possession under this decree, with all costs and interest on the same from this date, as well as interest on the wasilaut, which will be ascertained at the time of execution of the decree.

" Order accordingly. A decree accordingly in favor of plaintiff."

JUDGMENT.

The principal sudder ameen has utterly disregarded the injunction contained in section 10, Regulation XXVI. 1814, also in section 21, Regulation V. 1831, and the Circular Orders of the Sudder Court Nos. 127 and 128 of 1841; and several others to the same purport. He has also neglected to direct the plaintiff to file copies of the documents in the records of the cases he consulted, and on which he decreed the claim. This Court is consequently at a loss to discover the value of the evidence on which he has decided, and to which he has so loosely referred. The case is therefore remanded.

The principal sudder ameen will call upon the plaintiff to file the deed of gift, and the names of the witnesses to it to prove that it was real and not nominal. He will take evidence as to the possession of the plaintiff's husband alone, on the whole of the estate, in his father's life-time and after, and of the plaintiff after her husband's death, and proof of her having been forcibly ousted.

On the part of the defendants, he will call for proof of the deed of gift having been nominal, of their possession, after the father's decease, and until the order passed under Regulation V. 1799, and of the plaintiff having restored to them their respective shares, on their being about to sue, and made over her own share for the payment of her husband's debts, several of which they had liquidated. He will then decide.

The principal sudder ameen will be more careful in future in strictly adhering to the directions enjoined in section 10, Regulation XXVI. 1814, and the several circular orders above cited; and take care, that copies of all documentary evidence and depositions of witnesses, consulted from the records of other cases, be duly filed among the records of the case decided.

THE 12TH AUGUST 1846.

PRESENT:

J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 121 OF 1844.

A Special Appeal from the decision of the Principal Sudder Ameen of the 24-Pergunnahs, confirming that of the Moonsiff of Buseerhaat.

PRAN NATH CHOWDRY, FOR SELF AND GUARDIAN OF KASHI NATH CHOWDRY AND OTHERS, (DEFENDANT,) APPELLANT,

versus

GOUR MOHUN NAG CHOWDRY AND OTHERS, (PLAINTIFFS,) RESPONDENTS.

Pleader for Appellant—Moolvee Hamed Russool. Respondents did not appear.

THE plaintiffs sued to open a ghaut, called the Matabanga ghaut, estimating the produce thereof at ten rupees a day, to recover mesne profits for nine days; laying their suit at 50 rupees the value of ghaut and 90 rupees mesne profits, total 140 rupees.

The defendant pleaded, among other objections, that the plaintiff should have laid his suit at a year's produce of the ghaut, or 365 days at 10 rupees per day, or 3650 rupees, so that the case is not cognizable by a moonsiff. Neither the moonsiff, who tried the case in the first instance, nor the principal sudder ameen, who tried it in appeal, has entered on the investigation of this plea. The special appeal was admitted by Mr. Reid, on the 23rd March 1844, to try this point.

The Court are of opinion that the moonsiff should have decided this question before entering on the merits of the case, and this not having been done, they quash the proceedings of that officer and the principal sudder ameen, and direct that the case be sent back to the moonsiff with instructions, after due enquiry, to determine what is the selling price, or proper value, of the rights and interests claimed by the plaintiffs. Should the value have been under rated in the proportion of 10 per cent, he will nonsuit the plaintiffs. The usual order will pass in regard to the return of the value of the stamp on which the petitions of appeal and special appeal are written.

THE 12TH AUGUST 1846.

PRESENT :

J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 193 OF 1844.

A Special Appeal from the decision of the Judge of Purnea.

SHEIKH EMAUM BUKSH, (DEFENDANT,) APPELLANT,

versus

SHEIKH ENAYUT ALI, (PLAINTIFF,) RESPONDENT.

ON 17th January 1842, Sheikh Enayut Ali, farmer of mouzah Moheenee Kuhra, in pergunnah Huwelee Purnea, under a lease granted by the manager of pergunnah Huwelee Purnea, with the permission of the collector, for 5 years, 1245 to 1249 Moolkee, both inclusive, instituted this suit to compel the defendant, Sheikh Emaum Buksh, to pay an enhanced rent of 335-9-11 pie per annum, for 779 beegahs 10 cottahs of land, held by him in Bhag Kuhra, Bhag Nuraynpore, Bhag Phoolpore and Nij Mohunee. The plaintiff issued the notice prescribed by Regulation V. 1812, in the month of Jhyt 1243 Moolkee, and again in Magh of the same year. He sues also to recover the rents for the five years in question, or 335-9-11 pie × 5 years, ... 1678 1 7

Deduct paid in 1245, 48 rupees, 1246, 51 rupees, 1247, 51 rupees, 1248, 49 rupees, and 1249, 34 Rs.	233	0	0
	1445	1	7
Deduct amount for which defendant sued to set aside an improper attachment for the rent of 1248,	286	9	11
Principal, ...	1158	7	8
Interest, ...	308	10	0
Co.'s Rs. ...	1467	1	8

Sheikh Emaum Buksh, defendant, stated that for seven generations his ancestors had held Bhag Kuhra, and others, containing 400 beegahs, at an annual jumma of 45 rupees; and that on the occasion of the former farmers, Bykundee Mundul and Cohul Sircar, demanding a larger rent, his father sued them, and got a decree from the judge on the 12th March 1814, which upheld that rent;

and that, moreover, Gholam Hyder, who held the farm immediately before the plaintiff, and Gholam Jelanee, his surety, who were respectively the uncle and father of the plaintiff, received from him that rent and no more.

Moulvee Rookunoodeen, the principal sudder ameen of Purnea, decided the case on the 25th May 1842. He observed that the notices pleaded by plaintiff were proved by the evidence to have been issued in the months of Assar and Magh 1245, but that they were insufficient to prove the right of plaintiff to enhance the rent of 45 rupees per annum for 400 beegahs, proved to be the proper rent by the decision of 12th March 1814, 28 years ago, which the uncle and father of the plaintiff, who after that held the farm, had never endeavoured to enhance. He therefore considered the defendant entitled to hold 400 beegahs on a jumma of 45 rupees; as, however, the ameen deputed for a local enquiry had ascertained that defendant had possession, in excess of 400 beegahs, of 20 beegahs 17 cottahs, he must pay rent for that quantity of land at 4 annas per beegah, or Company's rupees 5-3-8-0 per annum. Hence 45 Sicca rupees, Company's rupees 47-13-0-0 + 5-3-8-0 = 53-0-8-0, for 4 years (deducting the rents of the year 1248 Moolkee) amounts to 212 1 12 0

Deduct the payment for those 4 years as per plaint 184 0 0 0

	28	1	12	0
Interest...	4	0	0	0
	32	1	12	0

It is therefore decreed, that defendant pay plaintiff 32-1-12-0, with costs in proportion.

The plaintiff appealed from this decision, and the case was taken up by the judge, the Honorable Robert Forbes, who, on the 31st December 1842, altered the decision of the principal sudder ameen. He was of opinion that as the defendant had no pottah to shew that his rent was fixed, the mere production of *farakhuttees*, or acquittances for rent, for several years, could not establish a right to hold so large a quantity of land on a fixed rent. He considered the plaintiff entitled to receive for 420 beegahs 17 cottahs of land, which appeared by the ameen's report to be in possession of the defendant, the sum of Company's rupees 578 6 11 2

Deducting the sum of 184 rupees acknowledged to have been received 184 0 0 0

394 6 11 2

He therefore decreed that respondent should pay this sum, with costs and interest.

The defendant, dissatisfied with the decision, applied to this Court for a special appeal, which was admitted on the 4th June 1844, under a certificate of Messrs. Tucker and Reid, dated the 11th May 1844, to try, first, the right of a manager of an estate, under attachment by orders of a civil court, appointed by a collector, under Regulation V. 1827, to grant a farming lease of any part of the property under his charge; and second, whether, supposing the farm to be good, the farmer had any right to enhance the rents of his ryots by enforcing Section 9, Regulation V. 1812?

The case was taken up by Mr. E. M. Gordon, who, on the 7th June 1845, directed that the case should be laid before a full Court.

OPINION.

The Court are of opinion, with reference to the terms of Section 26, Regulation V. 1812, which describe the duties to be performed by the manager appointed under that Section, viz. "to collect the rents, and discharge the public revenue, and provide for the cultivation and future improvement of the estate," that a manager so appointed has authority to enhance rents and to lease in farm; and that consequently the farmer appointed by him must be held to possess the same power.

The appeal is therefore dismissed, and the decision of the judge confirmed. The costs in all the courts are made payable by the appellant.

THE 18TH AUGUST 1846.

PRESENT:

A. DICK,

JUDGE.

CASE NO. 214 OF 1844.

Regular Appeal from the Principal Sudder Ameen of Dinagepore, Mohumud Khoorshed.

KUREEMA BEEBEE, PAUPER, (PLAINTIFF,) APPELLANT,

versus,

SHAMA SOONDREE DIBEEAH AND OTHERS, (DEFENDANTS,) RESPONDENTS.

Pleaders—Moolvee Mohumud Muzhir for Appellant, and Taruk Chundur and Aftab Oodeen for Respondents.

SUIT, laid at rupees 10,728-10-0, to annul a deed of security and proceedings thereon.

This claim was founded on a denial that plaintiff had ever become surety, or consented to the bond in question, and called in question the proceedings of the moonsiff, who was deputed to obtain her acknowledgment to the bond, on the ground that the witnesses named in the moonsiff's report had afterwards denied all knowledge of the matter. The principal sudder ameen, deeming the proceedings of the moonsiff in the nature of a judicial proceeding, did not think they ought to be questioned, and dismissed the suit.

JUDGMENT.

The Court see no sufficient cause to call in question the integrity of the proceedings held by the moonsiff; and the subsequent denial of the witnesses entered in his report, cannot be deemed worthy a moment's consideration. Some of them have besides, it appears, been committed and convicted of perjury. Appeal dismissed with costs.

THE 18TH AUGUST 1846.

PRESENT:

A. DICK,

JUDGE.

CASE NO. 106 OF 1844.

Regular Appeal from the decision of the Principal Sudder Ameen of zillah Dinagepore, Mohumud Khoorshed.

TOORFUTOONISSA BEBEE, APPELLANT, (PLAINTIFF,)

versus

SHAMA SOONDREE DIBEEAH AND GUDHADHUR CHUKURBUTTEE, RESPONDENTS, (DEFENDANTS.)

Pleaders—Ghoolam Sufdur for Appellant; and Tarik Chunder, Aftab Oodeen, Mohumud Huneef, Ahmud Rusool, Pursun Koomar, and Mr. Waller for Respondents.

SUIT, laid at rupees 10,748-0-12½, to annul a deed of security and proceedings thereon.

The claim is foundd on a deed of gift, hibbeh bil awuz, alleged to have been given for a consideration (7,109 Sicca rupees) nearly two years subsequent to the security bond for stayng a decree during

appeal. Several witnesses testified to the due execution of the deed of gift, and it purported to have been registered within a month of its being written, and proofs were tendered that possession had been obtained. On the other side, the deed was declared to be collusive; no mutation in the Government registry had been effected, the surety had continued to pay the revenue, to sue for rents, and to borrow for payment of arrears of revenue: on all which points documentary evidence was produced.

The principal sudder ameen, on the belief that the deed of gift was collusive to evade the security bond, dismissed the claim.

JUDGMENT.

It is admitted, that the name of the surety continued on the Government register as proprietor, till the time the security bond was taken; and she paid the Government revenue. Further, it is on evidence, not questionable, that she sued as proprietor of rents, and borrowed money to pay up arrears of revenue, therefore indisputable, that possession was not fully and completely given on the deed of gift, hibbeh bil awuz. Therefore it is of no effect. No reason can be assigned for mutation not being made in the Government registers, which are always referred to in cases of dispute and doubt, save and except fraudulent intention.

The appeal is dismissed with full costs.

The Court, on inspection of the certificate of registry on the deed of gift, discovered that it was contrary to the form laid down in Clause 2, Section 9, Regulation XXXVI. 1793, and further, that the English and Bengalee æras entered therein did not tally. The judge of zillah Beerbhoom, where the registry was effected, is directed to institute a full inquiry on the subject, and to report to this Court; the deed in question being carefully sealed up and forwarded to him.

THE 19TH AUGUST 1846.
PRESENT:
J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPORARY JUDGE

CASE NO. 65 OF 1844.

Regular Appeal from the decision of the Principal Sudder Ameen of zillah Mymensingh, Mr. Charles Mackay.

BUHWANEE CHUNDER CHOWDREE AND OTHERS, APPELLANTS, (DEFENDANTS,)

versus

KASHEE KANT UCHARJ CHOWDREE, RESPONDENT, (PLAINTIFF.)

Pleaders—Bunsee Budun, Uzmut Oola, Mr. Skinner, and Mr. Waller, for Appellants; and Ghoolam Sufdur and Pursun Koomar for Respondent.

SUIT, laid at Company's rupees 95,000, for re-annexation of a dependent talooq, illegally separated and rendered independent of the zumeendaree to which it formerly belonged.

The zumeendaree in question belonged to the husband of the female defendant, Bimla Dibeea Chowdrain, who died childless in 1206 B. Æ. having authorized her to adopt a son. She assumed possession of it, and registered her name in the collectorate as proprietor. Her principal manager was Sheeb Chunder, father of Buhwanee Chunder and uncle of Govind and Hurish Chunder; and his name was registered as proprietor of the talooq in question. On the publication of Regulation I. 1801, A. D., Sheeb Chunder petitioned the collector for separation in 1208 B. Æ., and again in 1212 B. Æ., when a notice was issued on the zumeendar Choudrain to object or consent. In 1212 B. Æ. she replied, admitting the right to separation. The jumma was then fixed, with reference to papers which had been filed by the Choudrain's husband, at Sicca rupees 1,472-11½, and she was again required to state if she had any objection. She replied again, concurring; in the same year 1212 B. Æ.

In 1209 B. Æ., she had adopted the respondent, Kashee Kant; in 1225, he attained his majority; in 1234, he presented a petition to the collector, objecting to the separation of the talooq, and praying for its annulment, and was informed that no notice could be taken of it, since his name was not registered as proprietor. Disputes

subsequently arose between him and his mother by adoption, the Choudrain; when at length in 1243 B. Æ., she consented to his name being registered as proprietor of the half, and he obtained possession of one half of the estate, she continuing registered as proprietor of the other half, and in possession as formerly. In 1246, he instituted this suit, calling in question the legality of the proceedings by which the separation was effected, and the right of the talooq to be declared independent, and the validity of the Choudrain's consent, which he declared was obtained fraudulently, through the undue influence of Sheeb Chunder, her manager, exerted over her.

The appellants replied that the suit was barred by lapse of time; that the right of the talooq to separation could be clearly proved; and that the Choudrain was under no undue influence when she gave her consent, for she was a remarkably intelligent active woman, who looked well after her own affairs; and that as she was the sole registered proprietor, her consent was perfectly valid and sufficient, and that the separation having been sanctioned by the Board of Revenue, the proceedings could not now be questioned.

The principal sudder ameen decreed the suit in the following words:

"The points to be looked into, and tried in this case, are:

1st. Are the deehahs, in dispute, of the description that can be separated from the zemindarry; and have they been kharij'd (transferred) on a proportionate jumma, according to the regulations?

2d. Did Beemlah Debeea (the plaintiff's mother) possess the power of making a transfer?

3d. Beemlah Debeea, the mother of plaintiff, having before complained for the reversal of the separation of the said deehahs, and *afterwards* filing a razeenamah in the case, can she or her son (to whom she has made over her estates) institute a fresh suit for the same identical claim?

4th. Is the present action barred by the rule of limitation, or not?

"In my opinion plaintiff has fully proved his claim, not so the defendants. 1st. The deehahs in question cannot be separated from the zemindary, because the Chowdhry defendants can produce no sunnud or document, by which the talookahs were given to them and their heirs in perpetuity on a fixed jumma, although they allege such to be the case on a jumma of 1449 rupees, 9 annas, 9 gundas. Moreover, the *hautcheeta* for the year 1191 B. S., and *deehahjaut* papers of the year 1201 B. S., filed by defendants, and the *registered* ekrar given by the *defendants' mourus*, to that of the plaintiff, dated 5th Sawun 1203 B. S., clearly shew the jumma to have been various, and therefore the lands in dispute come under the provisions of Clauses 6

and 7, Regulation VIII. 1793, and are not transferable. The defendants file a kistbundee, dated 5th Aughun 1203, alleging it was given them by plaintiff's father, but that *kistbundee is dated after the execution of the ekrar*, and is not registered, consequently under the spirit of Regulation XXXVI. 1793, it cannot affect the rights of previously registered documents; and were it otherwise, yet the *kistbundee* produced by defendants is of so unusual a character, and so opposed to the established usage of the country, that I discredit it altogether. Kistbundees, or deeds of that nature, are given by *persons receiving* to those who make the grant, be it of whatever nature, and never by zemindars to talookdars. Further the deehahjauts, in question, *were not* separated from the zemindary, in conformity with Clause 10, Regulation I. 1793, and Clause 8, Regulation I. 1801. *This fact*, the collector (who is also included amongst the defendants) *admits*. The collector also states that the Chowdry defendants were repeatedly called upon to produce documents to enable him to make the necessary transfer, recognizing them (the Chowdries) as the independent talookdars; *yet they never produced any proofs*, entitling them to the transfer, and that the *transfer* was made *solely on the petition*, to that effect, of Beemlah Debeea, the plaintiff's mother. At the time of this transfer, Sheeb Chunder (the Chowdry defendants' *mourus*) was the sudder and mofussil naib and general mooktear of Beemlah Debeea, and it is therefore to be presumed that, on his persuasion and influence, which seems to be very great, she petitioned the collector in the manner before set forth. It is also clear from the books of the registry office, in this zillah, that the ekrar copied in the book was subsequently altered and re-altered to suit the inclination and views of parties, and moreover that at the time of the said transfer, the present plaintiff was a minor, which circumstance, as also the existence of an *ekrar* given by *defendants' mourus* to plaintiff's father, in which they *stipulate not to separate* the lands in dispute *from the zemindary*, and to pay 2100 *rupees* jumma, *was not* brought to the collector's notice. Under this circumstance, therefore, the deehahs, or talookahs, have been improperly transferred. The present defendants, however, deny the existence of the above ekrar, but *that denial* is of no avail, since Sheeb Chunder, the defendants' *mourus*, in his urzee to the magistrate, acknowledged its existence, and of *which* there is a copy (though that also appears to be subsequently altered) in the books of the registry office. The kharij, or transfer, of these deehahs appears to be sanctioned by the Revenue Board, but that circumstance, in my opinion, is no bar to the institution of this suit, *vide* Section 12, Regulation VIII. 1793, and a precedent of the Court of Sudder Dewanny Adawlut, dated 22d June 1814, in the case of Jye Narain Roy, appellant, *versus* Kishen Chunder Sain, respond-

ent, in which it was ruled that a talookah obtained under circumstances similar to those in this case was considered invalid.

"2nd. The plaintiff is a *mutmunna*, sanctioned by the husband of Beemlah Debeea, and who, according to the Hindoo law, current in Bengal, is heir to all the estates, left by the Beemlah Debeea's husband, the Debeea having only a life interest therein, as respects her support and maintenance, and that consequently she *had not the power* to make a transfer, prejudicial to the rights and interest of the plaintiff. A fysulla has been filed by the plaintiff in the case, in which a bewusta of the pundit to this effect is given.

"3rd. The plea urged by defendants that this action having once before been instituted by plaintiff, another cannot now again, under the spirit of Regulation III. 1793, Clause 16, be revived by a fresh suit for the same property, is, in my opinion, of no avail, because by a reference to the suit alluded to, it appears the question of the *kharij namunzooree was never tried*, and that a razeenamah was filed in that case,* according to which it was struck off the file, *without any trial whatsoever* as to its merits; besides, the *present parties* were *none* of them *parties* in that *suit*, and therefore under the precedent of the Sudder Court in the case of Rajah Kishen Chunder and others, appellants, *versus* Mohanund Rai, respondent, and the circumstances of fraud on the part of defendants, as elicited in this case, I do not think the institution of this action is barred by the regulations. The fact of Beemlah Debeea's instituting a suit against the mourus of present defendants for a *kharij namunzooree*, and then making a razeenamah, does seem extraordinary and strange at first; but that circumstance only goes to confirm me the more in the opinion that imposition was practised upon her; for if she did in reality consent to the kharij taking place, she would not have brought forward an action for its reversal. It might here be urged that, in that case, why did she file a razeenamah in the suit? but when it is remembered that the said Sheeb Chunder was not only her sudder naib and general mooktear, but that also *he was the talookdar* of the disputed deehahs, that surprise will subside, for it is but too obvious that he had too much the confidence of his mistress, and that he abused the trust placed in him.

* No. 18691, dated

"4th. The defendants urge that in cases relative to kharij or transfers, Regulation XXV. of 1793, Section 25, limits the time allowed for the institution of a suit to *three* years. Section 30, Regulation XIX. 1814, limits it to 10 years, and Section 2, Clause 13, Regulation I. 1801, limits the period to one month, but Regulation XXV. 1793, and Clause 13, Regulation I. 1801, have both been rescinded, and further Regulation XIX. 1814 Section 30, bears no reference to a suit instituted in a *civil* court

Rather, Section 12, Regulation VIII. 1793, declares that in cases relative to transfer, an action is preferable to the dewanny court, where it will be governed and determined by the rules in force for the adjudication of all other civil suits instituted before that tribunal, and I therefore see no reason for admitting this plea. If it should appear that this suit has been instituted by plaintiff after a period of more than 12 *years*, yet no blame attaches to plaintiff, as appears from the copy of a petition filed in this case, which the collector rejected in consequence of the plaintiff's name not being recorded on his books of landed proprietors. It also appears from the ruffanamah, given to plaintiff by Beemlah Debeca, that he obtained the registry of his name as the proprietor on the 8th Assar 1243 B. S., from which time to the period of the institution of this suit, but *two* years *ten* months *twenty* days have elapsed; he therefore cannot be said to have forfeited his right to complain, for it is obvious he had *not* the power to do so *till he was* recorded the proprietor, which he did quite early enough after obtaining a *namjaree* of the estates, therefore, and with reference to the fraudulent conduct of Sheeb Chunder, Beemlah Debeea's mooktear, who was also the talookdar of these very lands, I consider this case as coming under the provisions of Section 3, Regulation II. 1805, and that it is not barred by the rule of limitation of 12 years. In support of this opinion, plaintiff produces a precedent of the court in the case of Gopee Kant Sein and others, appellants, *versus* Doorga Churn Chowdhry and others, respondents. For these reasons I am of opinion that he should get a decree in his favor against the Chowdhry defendants as particularized below, and that the collector defendant be released therefrom.

"Order accordingly. That the transfer (kharij) of these dechahs, as independent talooks, be set aside (namunzoored,) and that they be made *shamil*, i. e. re-attached to the plaintiff's zemindary. All costs of court on the part of plaintiff, and the collector defendant, to be paid by the defendant Chowdhrys of this suit."

The appellants preferred the appeal on the same grounds that they had defended their right.

JUDGMENT.

The Court are decidedly of opinion, that the suit is barred by the law of limitation. The plaintiff attained majority in 1225 B. Æ. He should then have persisted on his name being registered as proprietor, and if his mother refused, have sued her. His inability, therefore, to institute this suit within twelve years, was caused by himself, and he must abide the consequences.

The question of fraud will not avail him; for the present talooqdars, the respondents, had been in quiet possession by *inheritance* twelve years previous to his suit. Appeal decreed with full costs.

THE 19TH AUGUST 1846.

PRESENT:

J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 275 OF 1843.

A Regular Appeal from the decision of Rai Huri Nurayn Ghose, Principal Sudder Ameen of the 24-Pergunnahs.

MAHMOOD AHMED CHOWDRY AND HUMEEDOOL RUHMAN, (DEFENDANTS,) APPELLANTS,

versus

OBYE CHURN BANERJEE, (PLAINTIFF,) RESPONDENT.

THE plaintiff, as *shewait* or superintendent of the temple of the idol Gopeenath Jeo, and as such talookdar of Dehee Burdohu, sued the appellants and Hussun Ruza Chowdry, who, it would appear, died pending the action, to recover Company's rupees 9,550-8-6, principal and interest, of dues levied by them as *chandnee* on two begahs of *haat* and *chandnee* lands in the village of Bulundpore. Having on a former occasion sued to recover possession of five begahs, fifteen biswas of the land, the plaintiff got a decree from the register for possession of two begahs on 9th January 1830; this decision was confirmed by the judge on 5th November 1832. Executing the decree, he got possession of the lands and took out an ameen, Bholanath, to assess the mesne profits. The ameen found the mesne profits for nine years, nine months, and twenty-six days, to amount to rupees 8,953-10-2, and this amount was awarded by the principal sudder ameen on 30th September 1836. The judge confirming the order of the principal sudder ameen, a further appeal was preferred to the Sudder Court, when Mr. D. C. Smyth, on 22d June 1837, reversed the order of the lower courts, and ordered that plaintiff should receive mesne profits on the two begahs decreed in the proportion which the two begahs decreed bore to the amount of the produce of the five begahs, fifteen biswas, which plaintiff had claimed, or 120 rupees per annum. A petition of review of this order having been presented, the review was granted, and Messrs. Lee Warner

and Braddon, on 16th April 1840, refused to grant any mesne profits on a summary application, and referred the plaintiff to a regular suit. He consequently instituted this action to recover mesne profits from Bhadoon 1230 to 26th Jyte 1240, as estimated by the ameen, viz. Sicca rupees 8,953-10-2, Company's rupees 9,550-8-6, with interest till paid.

The defendants, Mahmood Ahmed Chowdry and Humeedool Ruhman, objected to the payment of any cesses at all, pleading that the levy of them was prohibited by Clause 2, Section 2, Regulation XXVII. 1793. They also objected to the assessment by the ameen.

The principal sudder ameen, Huri Nurayn Rai, was of opinion that it was proved that the defendants did levy the bazar dues, and with reference to the evidence, decided that plaintiff was entitled to mesne profits from Bhadoon 1230 to 26th Jhyte 1240, nine years, nine months, twenty-six days, at the rate of eight rupees per *haat*, of which there were eight in the month, Sicca rupees, 7546 0 0 0

Deduct costs of collection at five per cent., ... 589 5 6 2

6956 10 13 2

Company's rupees, 7420 6 8 pie

from which was to be deducted 5,016-5-6 pie, received by plaintiff when the first decree was under execution by attachment of that sum as surplus proceeds of a sale in the collector's hands, leaving a balance of Company's rupees 2,404-1-2, to be levied with interest till paid from the defendants who had appeared, and the estate of the deceased defendant Hussun Ruza.

Mahmood Ahmed Chowdry and Humeedool Ruhman appealed to this Court, but the latter dying, no heir appeared to carry on the appeal on his behalf. The pleas of the appellants were the illegality of the levy of such cesses under the Clause before cited, and the exorbitance of the amount. They urged that in justice they could not be made to pay more for the proceeds of the two begahs, than a sum proportioned to the amount at which the plaintiff estimated the proceeds of the five begahs, fifteen biswas claimed by him in the first instance.

The case was first taken up by Mr. E. M. Gordon, who referred it to a full bench.

The Court are of opinion that the present suit being brought by the express permission of four judges of this Court, no objection can now be raised against hearing and trying it on its merits; there remain two points to be disposed of.

1st. Whether the items included in the wasilat come under the denomination of sayer, the collection of which is prohibited by law. We are of opinion that no such item has been pointed out, those alluded to being of the nature of rent of land upon which standing

or temporary booths, or shops, were established, not of a tax or duty on commodities sold.

2d. The other objection is to the amount of wasilat; but as the defendant had turned out the rightful owner and retained the collections in his own hands, and has not produced the accounts of his collections as he was bound to do, his objections to the general amount of the sum calculated are deserving of little attention; and in fact no fair ground of objection to the amount has been advanced.

The Court therefore confirm the decision of the principal sudder ameen of 24-Pergunnahs with costs against the appellant.

THE 24TH AUGUST 1846.

PRESENT:

A. DICK,

JUDGE.

CASE No. 103 OF 1844.

Regular Appeal from the decision of the Principal Sudder Ameen of East Burdwan, Jenaub Allee Khan.

KALLY PURSHAUD SINGH RAEE, APPELLANT,

(DEFENDANT,)

versus

JOHN OWEN ELIAS, RESPONDENT, (PLAINTIFF.)

Pleaders—Raj Narayn Dutt for Appellant; and Gholam Sufder, Sheeoo Narain Chuttoojea and Neelmunce Bonerjea for Respondent.

SUIT, laid at Company's rupees 7,145-8-5 gundas, for possession on beegahs 550-10-17½ in the village Chundeepoor.

It appearing on perusal of the record that the principal sudder ameen had totally disregarded the directions, contained in Section 10, Regulation XXVI. 1814, and so repeatedly enjoined by Regulation and Construction, and Circular Orders of the Sudder Dewanny Adawlut; further that he had decided the case principally on documents filed in the record of another suit which he inspected, and without requiring the parties to file copies of those documents in the record of this case; ordered that the suit be remanded, for reinvestigation, strictly in accordance to the law and Circular Orders of the Sudder Court; and that the principal sudder ameen be careful in future to require copies of all documents referred to in his decision to be filed in the record of the case.

THE 24TH AUGUST 1846.

PRESENT:

A. DICK,
JUDGE.

CASE No. 114 OF 1844.

Regular Appeal from the decision of the Principal Sudder Ameen of East Burdwan, Jenaub Allee Khan.

MR. WILLIAM STORM, AND MR. WILLIAM McIVES, APPELLANTS, (DEFENDANTS,)

versus

JOHN OWEN ELIAS, RESPONDENT, (PLAINTIFF.)

Pleaders—Prosono Coomar Tagore for Appellants; and Neelmony Bonerjea and Sheeoo Narayn Chatterjea for Respondent.

THIS is merely another appeal from the same decision as the above, and the same order passed.

THE 26TH AUGUST 1846.

PRESENT:

J. F. M. REID and
A. DICK,
JUDGES,
and
W. B. JACKSON,
OFFG. TEMPORARY JUDGE.

CASE No. 158 of 1843.

A Regular Appeal from the decision of Moolvee Rookunoodeen, Principal Sudder Ameen of Purnea.

MR. ALEXANDER IMLACH, (PLAINTIFF,) APPELLANT,

versus

RAJA RAJINDER NURAYN ROY, RAJA MUHINDER NURAYN ROY, AND RANEE SIDHWUTTEE, (DEFENDANTS,) RESPONDENTS.

Pleaders—Appellant in person—Moolvee Hamid Russool for Raja Rajinder Nurayn Roy, and Moolvee Mahomed Huneef for Raja Muhinder Nurayn Roy.

THE plaintiff sued to recover the sum of Sicca rupees 14,636-10-4-0, or Company's rupees 15,612-6-2-0, as arrears of salary and

house rent for the period during which he served the defendants as *mokhtar*, or general agent, for the management of their concerns. He stated that, on the 12th May 1834, A. D., or 31st Bysakh 1242, Moolkee, Raja Rajinder Nurayn Roy, the eldest son, Ranee Sidhwuttee, the widow, and Raja Muhinder Narayn Roy, the younger son, of the late Raja Sri Nurayn Roy, engaged him as *mokhtur*, or general agent, to manage their estates, guaranteeing to him by a written agreement the payment for two years certain of a salary of 700 Sicca rupees per mensem and his travelling charges and house rent; that at the expiration of that period he continued to act as agent, the agreement having been renewed by written and verbal communications, till 24th December 1839; that though the defendants have frequently acknowledged the correctness of the accounts rendered by him, they refused to pay him what is due to him, and thereby compel him to bring this action to recover as follows:

Salary at 700 Sicca rupees per month, from 1st Jhyt 1242 Moolkee, or 13th May 1834 A. D., to 10th Poos 1247 Moolkee, or 24th December 1839, 5 years, 7 months, and 10 days,............					47,133	5	6	0
House rent from October 1834 to 24th December 1839, 5 years, 2 months, and 24 days,...					9,416	2	1	0
Sicca rupees, ...					56,549	7	7	0
Deduct paid from September 1834 to 24th December 1836, Sicca rupees, ...	20,550	0	0	0				
„ from 27th December 1836 to 24th December 1839, Company's rupees 22,786-15-4 or Sicca rupees,	21,632	13	3	0				
					41,912	13	3	0
Sicca rupees, ...					14,636	10	5	0
Company's rupees, ...					15,612	6	2	0

Raja Muhinder Narayn Roy pleaded that though he was not legally bound by the agreement entered into by his brother and mother, he being at the time, as stated by the plaintiff, a minor, yet on plaintiff's furnishing him with an account, in Bengalee, of salary due from Sawun 1245 Moolkee to Assun 1247 M., and house rent from 1st September 1837 to September 1839, amounting to Sicca rupees 23,326-1-16-0, of which one moiety, or Sicca rupees 11,163-0-18-0, was due by his brother and one moiety by himself; that having previously paid Sicca rupees 5500, the sum of Sicca rupees 5663-0-18-0 remained due; that, being unwilling to retain plaintiff on so high a salary, he discharged him in Kartic

1247 Moolkee, and paid him up the balance due Sicca rupees 5663-0-18-0, in December 1839. He objected to the plaintiff's suing himself and his brother each for the full amount, pleading that he ought only to sue each for one half.

Raja Rajinder Narayn Roy objected to plaintiff's suing in the same action to recover salary due for the period for which he served under a written agreement, and that for which he served without one. He pleaded that no house rent or travelling charges were due, as Calcutta was the plaintiff's own residence, therefore none was incurred, and that plaintiff never went to Europe to look after the appeal pending before the Privy Council, which by the way had gone against him; and that the plaintiff having taken a sunnud as a vakeel of the Sudder Dewanny Adawlut could not do any other business; that deducting from the sum received by the plaintiff by his own shewing Rupees 43,336-15-4, (viz. Sicca rupees 20,550 and Company's rupees 22,786-15-4-0,) the salary for 2 years at 700 rupees a month 16,800 rupees, there was still due from plaintiff a balance of 26,536-15-4-0, to recover which and certain documents left in his hands he was about to sue, when the plaintiff anticipated him by this action.

Moolvee Rookunoodeen, the principal sudder ameen of Purnea, dismissed the plaintiff's claim on the 13th March 1844, because the plaintiff had, in his opinion, failed to prove that, on the expiration of the period of two years, for which he was appointed general agent by the written deed of agreement, he had ever been re-appointed on the same terms.

The plaintiff preferred an appeal to this Court from the principal sudder ameen's decision, which, having been heard by Mr. E. M. Gordon, was by him referred to a full bench.

JUDGMENT.

Under the terms of the ikrarnameh, the plaintiff, Mr. Imlach, was appointed to perform certain duties for a remuneration of 700 rupees a month, and it was expressly stated in that document, that the engagement was positively to stand good for two years, seven months, and ten days; because in accepting it, Mr. Imlach might have to vacate an office of manager of another estate, which he then held. Mr. Imlach says that he continued to perform this duty for five years, seven months, and ten days; but the defendants assert that he has not given his entire time to the duty, having been, in the mean time, admitted as a wakeel of the Sudder Court. It appears to us that the mere admission to practise as wakeel does not vitiate the former engagement: the defendants were at liberty to dismiss the plaintiff, if they considered his employment as a wakeel incompatible with the proper performance of his previous engagement, but they did not do so; the inference is that they did not so consider it, and if plaintiff can prove that he continued in exercise of the power conveyed

to him by the written engagement for the time for which he claims remuneration, he is entitled to receive it. It is not contended that any important dereliction of duty on his part ever occurred; the twenty-one documents filed by the plaintiff shew, that he was employed in this duty from 1*st Jet* 1242 M. to 10*th Poose* 1247 M., and the genuineness of these documents, which are chiefly communications with him on the part of defendants regarding their affairs, is not contested: there is therefore no reason to doubt that he is entitled to remuneration on the terms fixed by the written engagement of defendants for the period mentioned in the plaint.

There remains one question, the adjustment of accounts. It seems that the younger brother, Muhinder Nurayn, has actually paid the plaintiff nearly up to the date to which he claims, on account of his own share; but the claim is good against the estate generally under the agreement; and we see no reason to admit of a separation of interests of the defendants, or of separate accounts in this matter. It is further to be observed that the continued payment on the part of the defendants, after the expiration of the two years stipulated in the agreement, is strong presumptive evidence that both parties considered the engagement to stand good, notwithstanding the expiration of those two years. On looking over the account of the plaintiff, we find that he has omitted all claims on account of travelling allowance, mentioned in the agreement, but he claims house rent at the rate of 150 rupees a month from the date of his arrival in Calcutta; we observe that the stipulation for payment of house rent in the engagement did not, in our opinion, contemplate a permanent residence in Calcutta, but was rather for the payment of house rent on occasional visits to that place; we consider that the permanent residence of the plaintiff in Calcutta may fairly be taken to have commenced with the date of his being sworn in as a wakeel in the Sudder Court, and he is entitled to receive the allowance for house rent only up to that date, viz. to the 16th June 1837; the allowance for house rent after that date must be struck out of the account.

We therefore reverse the decision of the principal sudder ameen and give an award in favor of plaintiff for rupees 10,769-11-9-2c., with costs in proportion to the sum awarded against the defendants, who will also pay interest on the sum awarded from the date of plaint.

THE 27TH AUGUST 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 376 OF 1845.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Sarun, Mohummud Rafik Khan, September 16th 1845.

RAMPERSHAD SOOKUL, APPELLANT, (DEFENDANT,)
(WITH OTHERS,)

versus

SAHAWUN LAL AND JHUBOO LAL, RESPONDENTS,
(PLAINTIFFS.)

Wukeel of Appellant—Gholam Sufdur.

Wukeels of Respondents—J. G. Waller and Ameer Alli.

THIS suit was instituted by respondent, on the 30th July 1844, to recover a certain *cowaleh* (or deed of sale) and an acknowledgment or receipt for money, both bearing date the 29th March 1844; and to obtain the registry of their (respondents') names, in the Government revenue office, as proprietors of a third, or five annas, four pie share, of mouzah Purhunee, in pergunnah Baneh; the amount, as exhibited in the said *cowaleh* and acknowledgment, being Company's rupees 7,000.

The claim of respondents is opposed by appellant, on the ground of another *cowaleh*, held by him, for the same lands, and another acknowledgment for the money paid for them (Company's rupees 7,500,) both bearing date the 12th July 1844,—three months and a half, that is, subsequently to those which respondents now sue to recover.

The question to be determined, is, to which of these *cowalehs* preference is to be given; in other words, to which party the lands specified have been legally sold.

Appellant pleads, that the action has been brought under a wrong and consequently an illegal estimate of the value of the property claimed; that, as prior owner of two-thirds of the estate, the right of pre-emption lay with him, which right has been infringed by the alleged sale to respondents; that his (appellant's) *cowaleh* has been duly registered, while that of respondents has, avowedly,

not been so, which fact, alone, under Act I. of 1843, is conclusive in favor of his right, in preference to that set forth by respondents; that a previous arrangement (to that pleaded by respondents) had been made between him (appellant) and the agents of the proprietors of the lands, for the sale and purchase of them, and that money had been advanced by him to those persons for stampt paper and other contingent disbursements, and that, with reference to this, his rights must be considered, if only on the score of priority, as superior to those assumed by his opponents. Further, the evidence of respondents, more particularly with respect to the full payment of the purchase money by them, is impugned, as insufficient to establish what it was adduced to substantiate.

Respondents observe, in answer to the above, that the estimate of the value of the property said to be claimed, has apparently been impugned on a pretended supposition of possession of the land being the object of the suit, whereas they (respondents) already possessed the land, and the object sought was the recovery of the papers, the execution of which constituted them the rightful owners of it; that this also applies to the plea founded on Act I. of 1843, the papers presented for registry before those of appellant were so presented,—and which papers have been withheld through the collusion of appellant and those who executed them, and themselves petitioned for the registry which they afterwards prevented,—being (as just stated) the object sought; that the right of pre-emption never was urged, and therefore cannot be pleaded; that the asserted prior arrangement for the sale and purchase of the lands, is not true, and if it were true, would in no wise affect an engagement finally concluded by a formal transfer of the property by deeds duly and legally executed; and, finally, as to the weight and value of the evidence, that will be determined by the court.

The principal sudder ameen, after a full consideration of the facts and circumstances of the case, upheld the *cowaleh* of the 29th March in favor of respondents, and decreed accordingly; and entirely concurring in the view taken by him of the evidence on which the judgment has been founded, I affirm it with all costs payable by appellant.

THE 29TH AUGUST 1846.

PRESENT:

C. TUCKER and
J. F. M. REID,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

PETITIONS NOS. 297 AND 298 OF 1846.

IN the matter of the petitions of Neel Kumul Paul Chowdry, filed in this Court on the 3d June 1844, praying for the admission of a special appeal from the decision of Moulovee Mahomed Kuleem, principal sudder ameen of Jessore, under date the 29th February 1844, altering one decision and confirming another of Ubdool Rooh, moonsiff of Salka, under date 25th August 1843, in the case of Kussim Ooddeen Biswas, plaintiff, *versus* Neel Comul Pal Chowdry, defendant.

Vakeel of petitioner, Rai Sri Nauth.

Kussim Ooddeen Biswas instituted two suits against the petitioner before the moonsiff of Salka, No. 1017, for damages for the non-delivery of dakhilas for rupees 29-13-17-1, paid as rent for 1248 B. S., laying his suit at rupees 29-13-17-1, and No. 1107, to set aside a summary decision under Regulation VII. 1799, for rupees 32-1-6-1, rent due for 1248 B. S. The moonsiff decided both cases in favor of the plaintiff, in the first awarding rupees 59-11-14-2, double the amount paid without dakhilah having been granted, in the second reversing the summary award. Both cases were appealed. In the first, the principal sudder ameen, on the 27th February 1844, required the petitioner to produce a witness to prove the *juma-wasil bakee.* Two days after the petitioner pleaded inability to produce him, and the principal sudder ameen, without giving petitioner time to produce the witness, or issuing a subpœna for his attendance, decided the appeal on the 29th February 1844, confirming that part of the moonsiff's decision which awarded 29-13-17-1, as penalty equal to the amount paid for which no dakhila was granted, and reversing that portion which awarded a penalty of double the sum as the plaintiff had not demanded it in his plaint. He on the same day confirmed the decision in the second case.

The Court, being of opinion that the principal sudder ameen had no power to dispose of the case without summoning the witness in question, consider the decision of the first case incomplete, and accordingly remand it for retrial on its merits; and as the decision in the second case depends on the same evidence, that case is also remanded for retrial. The stampt paper on which the petitions of special appeal have been written will be returned.

TABLE OF CASES.

REGULAR CASES.

APPLICATIONS FOR SPECIAL APPEAL.

THE 3D SEPTEMBER 1846.

PRESENT:

C. TUCKER and
J. F. M. REID,
JUDGES;

and

R. BARLOW,
TEMPORARY JUDGE.

CASE No. 267 of 1844

MR. LYALL, (DEFENDANT,) APPELLANT,

versus

SHEEB CHUNDER RAY AND KALA CHAND RAY,
(PLAINTIFFS,) RESPONDENTS.

Pleaders—Prosonnokoomar Tagore and Abbas Allee for the Appellant; and Gholam Sufdar for Respondents.

CASE No. 270 OF 1844,

MR. HENRY GORDON, (DEFENDANT,) APPELLANT,

versus

SHEEB CHUNDER RAY AND KALA CHAND RAY,
(PLAINTIFFS,) RESPONDENTS.

AMOUNT of appeal, rupees 2601-9.

These are two regular appeals against an order of Syed Ahmed Buksh, acting principal sudder ameen of zillah Nuddeah, dated the 19th July 1844.

This case was originally disposed of by Ram Lochun Ghose, the principal sudder ameen of the zillah, on the 18th April 1842; and, on appeal to this Court, was remanded for further investigation by Mr. Barlow, on the 11th March 1844. The proceedings now before the Court, are the result of this re-investigation.

The plaint is as follows: We have an jimalee putnee talook in turf Santipore. Within the following boundaries there are 600 biggahs of alluvial land, belonging to village Phoolea: on the north is Poolmooleah; east is the dry bed of the river; west is Kata Khal; south is the Ganges. These lands were declared in a regular suit in the

Sudder Dewanny Adawlut, to belong to the village Phoolea and not to the Jhow Mehal, in an action between the 10 annas and 6 annas sharers in the Jhow Mehal, and [illegible] Chunder Mokerjea and Dayah Mayee Dibah, former putneedars of turf Santipore. In 1243 we cultivated these lands for crops of 1244, and cut indigo and other crops on them. In 1244 we made advances, and cultivated them for indigo crop for 1245. Within the above limits, 400 biggahs were actually prepared for indigo. Some of the land was sowed. On attempting to sow the remainder, Mr. Lyall's people objected. On the strength however of the decision of the Sudder Dewanny Adawlut, as above, and by aid of the foujdaree court, we did at length sow them. Other land subsequently formed to the south of our land, for which the defendants disputed and applied to the talookdars for pottahs. The molovy of the foujdaree court was sent to settle what these new lands were. He recorded a proceeding declaring our right to 600 biggahs as above defined, and made over those to the south to the defendants. Their disputes however did not come to an end. Mr. Gordon instituted two actions, one for 6 annas share in his own name, and another for 10 annas in the name of Mr. Bishop against Mr. Lyall. In his plaint he excluded our 600 biggahs as per boundaries given above; but, instead of stating they contained 600 biggahs, he alleged the area contained only 250 biggahs. As however he excluded our land, we did not think it necessary to answer the plaints in our defence. The case for 6 annas share was decreed for Mr. Gordon, and the suit for the 10 annas share was dismissed on Mr. Bishop's plaint. In execution of the decree which had been passed in favor of Mr. Gordon, his disputes with Mr. Lyall continued, the crop was contested, and the nazir of the court was sent to give possession of indigo to the parties respectively in shares of 6 annas and 10 annas. They both, seeing first-rate plant on 400 biggahs of the 600 decreed to us, through the nazir, cut the indigo growing on it, calling the area only 275 biggahs. The former judge, on our appeal, declared the crop to be ours, though cut by the defendants, and we were ordered to sue for the value of the indigo. The defendants cut the crop on our 400 biggahs, the manufactured produce of which, after deduction of all expences, would have been worth 8,300 rupees. We sue for this sum with interest from Poos 1245 when the sales of indigo commenced, to the date of plaint 14th Bhadoor 1247, being 20 months and 14 days, at 12 per cent. 1699 rupees, 10 annas, 8 pie, making a total of 9999 rupees, 10 annas, 8 pie.

Mr. Lyall's answer. I got from the widow of Hurris Chunder Ray, the 10 annas zemindar, in 1242, a pottah of Jhow Mehal for five years, and in 1243 a similar pottah from the 6 annas zemindar Roopnarain Bose: thus I held the 16 annas. In 1243 Mr. Gordon and I had disputes in the foujdaree

court for the 6 annas, when I was, under the orders of the commissioner, put in possession of the entire 16 annas. At that time plaintiffs preferred no claim, nor was there any mention of their names in the proceedings. They sue for the crop of 1245, in order to establish their right of possession. On the resumption of the Jhow Mehal, while in appeal before the special commissioner, the entire chur was made over to the talookdars, the 10 and 6 annas sharers, on security, and they gave me pottahs. Neither Sheeb Chunder nor Dayah Mayee appeared on that occasion. The molovy never settled the boundaries, as alleged, in the presence of the talookdars. In 1244 I cultivated the entire 16 annas with indigo. The crop on the 6 annas share was given by the judge's nazir to Mr. Gordon in execution of decree, and he, under cover of the decree, cut a portion of the indigo on my 10 annas share. I represented this to the judge, and he attached the crop which was destroyed by the water. The plaintiffs ought to have sued the proprietors of the land for possession. I am only a ryot under them.

Answer of Mr. Gordon. Adit Churn Dutt, on part of Mr. Bishop, former proprietor of the factory of Kooleah Doh, got a farm of 6 annas chur Jhow Mehal, on the 31st Assar 1242, from Roopnarain Bose, for 5 years. The extent of the land in the 6 annas was 507-5, and the jumma thereof 500 rupees. In 1243 Kartik, I bought the factory and cultivated 391 biggahs of the above land with indigo, when Mr. Lyall and Roopnarain in collusion cut the crop and ousted me. I sued them, the talookdars, Kalee Pooroma Mokerjea and Sheeb Chunder the plaintiff, and obtained a decree in the judge's court on the 29th Bysack 1245. I put this in execution, and gave security for the crop on 272 biggahs, which was given to me by the nazir between the 24th and 26th of Assar, cultivated by Mr. Lyall. The plants on the said lands were of different qualities. The plaintiffs should have stated when, and in what quantities we, the defendants, respectively cut the crop, and each of us should have been sued separately. The nazir of the court was twenty days on the spot, but plaintiffs did not urge their claims; it was only when the waters had destroyed the crops that plaintiffs came forward. I did not cut plaintiffs' crop; and that which was given to me by the nazir was not my full 6 annas share, decreed by the court. Mr. Lyall got a part of it. Plaintiffs have put in no proof of previous possession of 600 biggahs of land. The produce of the lands in question was only 8 bundles per biggah in that year; and indigo manufactured in the native concerns sold for 150 rupees per maund only. The boundaries laid down by the plaintiffs include 1500 biggahs of my Jhow Mehal.

The principal sudder ameen, on the 18th April 1842, recorded his decision as follows. The points on which this case turns are—

What quantity of land did the plaintiffs cultivate in 1245 B. S. on the disputed chur, and under what title? Did the defendants carry off the indigo crop as alleged, and what was the quantity carried off?

It appears, from the admission of the defendants, that the plaintiffs are entitled to the entire right of Dayah Mayee Dibah, the former putneedar of turf Santipore. The Sudder's decree establishes the right of the putneedars to 250 biggahs on the disputed chur, situate in the said turf. It only remains to be seen, whether plaintiffs' claim to the indigo crop on the said land is good. I consider it valid. Mr. Gordon in his plaint of the 10th Assar 1244, stated that Dayah Mayee had right to 250 biggahs in chur Jhow Mehal, and that the plaintiffs had 300 biggahs to the north of her land. No further proof is therefore necessary that Sheeb Chunder Ray, the plaintiff in this case, who purchased from Dayah Mayee, is entitled to so much land. A pottah of the 21st Assar 1242 by Roopnarain Bose to Mr. Bishop also proves this. The ameen's report of 1243, Maugh 5th, the molovy's roobikaree of 4th Phalgoon of the same year, the assistant collector's proceedings of the 12th Poos 1245, and those of the collector of the 18th Assar 1246, prove plaintiffs' possession. The deposition of Aftaboddeen burkundauze shows plaintiffs sowed the land in 1245; and the nazir's report of the 5th Bhadoor, and Sunnoo peadah's statement of 22d and 24th of Srabon 1845; prove attachment by order of the judge of the indigo crop, which was afterwards cut per force by the defendants. Plaintiffs bring no proof of their possession of 600 biggahs, and the Sudder decree in their favor is only for 250. The commissioner of revenue only upheld their possession of that quantity of land. They are only entitled to recover for crops on it. The papers of this case prove the defendants cut this crop. I therefore decree the value of the manufactured indigo produced from the 250 biggahs, after deducting the cost of manufacture. Mr. Gordon's decree shows that the produce per biggah was 20 bundles, and 16 seers of indigo was the produce of 100 bundles, at which rate 5000 bundles would produce 20 maunds of made indigo. Sooroop Sircar in 1244 got a decree for 200 rupees per maund of indigo. From defendant's vakeel it appears that in 1245 indigo sold higher than in 1244. Mr. Harris's statement proves that his Khal Bolea indigo sold for 242 Company's rupees, 8 annas, in 1245. Plaintiffs' claim then of 220 per maund is not excessive. I award 20 maunds at 220 per maund, 4400, after deducting rupees 12½ per maund expence of manufacture, leaving the sum of 4150 rupees, with costs, to be recovered from the defendants, in the proportion of 10 annas from Mr. Lyall, and 6 annas from Mr. Gordon, with interest thereon from Poos 1245 date of sale, to this date, 1669-10-10, in the same proportion, and interest on the aggregate to date of realization, similarly charged. Costs upon so much of plaintiffs' claim as is not admitted are charged to them.

The decision of Syed Ahmed Buksh, principal sudder ameen, against which the appeals now before the Court are brought, supports that of Ram Lochun Ghose, and sets forth similar grounds for passing a decree in favour of the plaintiffs. It is therefore unnecessary to detail them at large.

BY THE COURT.

Plaintiffs claim value of indigo grown on 400 biggahs, on the strength of a decree of court giving them specifically 250 biggahs only. This decree does not however point out the boundaries of the land decreed, and consequently there can be no identification of them with those on which the crop, the value of which is now sued for, was grown.

Moreover plaintiffs have not, as was necessary, brought their action against the proprietors of the soil from whom the defendants hold pottahs. The question at issue, the Court observe, is not only right to crops, but, as pleaded by the defendants, the proprietory right to lands, which the plaintiffs claim as appertaining to turf Santipore, and the defendants allege belong to the zemindars of the Jhow Mehal, whose under tenants they declare themselves to be. Under these circumstances, it was incumbent on the plaintiffs to sue the zemindars, and to prove their right to the lands which they now seek to establish under covert of a suit for crops and the value of indigo produced from them. Plaintiffs are nonsuited, and costs charged to them. Ordered, that copy of this decision be appended to case No. 270 between the same parties.

THE 3D SEPTEMBER 1846.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 42 of 1844.

Regular Appeal from the decision of Principal Sudder Ameen of Nuddea.

MR. ANDREW LYALL, (PLAINTIFF,) APPELLANT,

versus

SHEEB CHURN RAY AND KALA CHAND RAY, (DEFENDANTS,) RESPONDENTS.

Wukeels of Appellant.—Ram Pran Roy and Bungshee Buddun Mitter.
Wukeel of Respondents,—Mr. Waller.

THE parties in this case were before the Court in case No. 267 of 1844, disposed of by a full bench this day.

This action is laid at 13,125 Company's rupees value of indigo, after deducting expence of manufacture. Plaintiff alleges that the defendants, on various dates between the 21st Assar and 30th Srabun 1248, cut and carried off his indigo crop from 700 beegahs of land, situate in chur Jhow Mehal, in pergunnah Put Mehal, which he held under a pottah from the zumindar, Ranee Hursoonderee. The pleas urged by the parties respectively are the same as those brought forward in case No. 267. The defendants, as before, pleaded right to the lands which formed part of the village Phoolea in turf Santipore, and denied cutting any portion of plaintiff's crop, and averred this suit was instituted as a set off against that in which defendants were plaintiffs and obtained a decree against Mr. Lyall.

The principal sudder ameen, on the 17th May 1843, dismissed the plaint in default of all proof. Setting aside the evidence of both parties, which he considered unworthy of credit, he decided the case on circumstantial grounds as follows. It appears from the plaint that the indigo of 700 beegahs was cut by the defendants between the 21st Assar and the 30th Srabon 1248; but in his petition to the magistrate, the plaintiff spoke of the cutting of 661 beegahs of plant only on the 4th Srabon. Under the order of the magistrate on the said petition, both bearing date the 10th Srabon, plaintiff was put in possession. Had the defendants after the issue of this order, cut the crop on the dates mentioned per force, the darogah would have given information of the fact, or the plaintiff would have applied to the police, to the magistrate, or to the collector. Such was not the case, on the contrary the defendants complained at the thanah against the plaintiff. Hurree Madhob Bukshee, who was deputed by the collector to give plaintiff possession of certain land, was on the spot from the 27th Assar to the 30th Srabon; had the defendants cut the crop, he too would have given information, and plaintiff would not object as he does to cite him as a witness. Again, plaintiff has failed to prove he was in possession of the lands in 1247, and cultivated them as alleged for crop of 1248. Nay more, his vakeel states he has no documentary proof of the fact. Under the above circumstances, the plaint was dismissed with costs.

By the Court.

The plaintiff sued the defendants, putneedars, without specifying the boundary of the parcel of grounds from which the indigo had been cut and carried off—his plaint is altogether deficient in this respect—and further the evidence and proof he has adduced are, the Court consider, very unsatisfactory. The principal sudder ameen's comments, and his reasons for dismissing the plaint, the Court consider, on the whole, just and proper; and seeing no reason to interfere with his orders, they reject the appeal with costs.

THE 7TH SEPTEMBER 1846.

PRESENT:

R. H. RATTRAY and
C. TUCKER,
JUDGES,
and
R. BARLOW,
OFFICIATING TEMPORARY JUDGE.

CASE No. 249 OF 1844.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Patna, E. DaCosta, June 11th 1844.

SYUD SUJAIT ALI, (DEFENDANT,) APPELLANT,

versus

MOOST. TORAB-O-NISSA BEGUM, MABARUK ALI, (FATHER AND GUARDIAN OF MOOST. NADAR-O-NISSA, MOOST. KURUN-O-NISSA, AND MOOST. AFZUT-O-NISSA, MINORS,) PURCHASER FROM PLAINTIFF OF THE LAND CONTESTED, (PLAINTIFFS,) RESPONDENTS.

Wakeels of Appellant—J. G. Waller and Luchmee Pershad.
Wakeel of Respondents—Hamid Russool.

THIS suit was instituted by Moost. Torab-o-Nissa, *in forma pauperis*, on the 23rd June 1842, to recover from appellant a two annas share of the estate, real and personal, of Meer Kufaitoollah, deceased, father of plaintiff, as set forth in detail; amounting, in the whole, to Company's rupees 17,848-14-10.

The substance of the plaint, is, that the estate of Kufaitoollah had been apportioned as follows: a 4 annas share, each, to Fyz Ali, Sujait Ali, and Gohur Ali, his sons; a 2 annas share to Moost Sukeena, his second wife; and the same to Torab-o-Nissa, his daughter, (plaintiff,) that on the death of Fyz Ali, Sujait Ali (appellant,) commenced disputing, and withheld every one's rights; that at last, Moost. Zeb-o-Nissa, widow of Gohur Ali (then deceased) brought an action, to the extent of her husband's share, for the recovery of her marriage dower, and got a decree; that when this decree was about to be executed, with the view of obtaining it and the rest, Sujait Ali brought a suit for the whole property on the ground of its having been mortgaged for the marriage dower of his mother, Moost. Sukeena, to the extent of 125,000 rupees, of which 25,000 only had been satisfied; that this claim was dismissed by all the courts; that after this, plaintiff demanded her paternal

share of 2 annas, and her brother, Fyz Ali's of 1½ anna, but unsuccessfully; that upon this, she presented two petitions, to be allowed to sue for these as a pauper, when Sujait Ali applied to her, proposing that she should forego all claim to previous *wasilat*, which he agreed to pay from 1248 Fuslee, with a thousand rupees cash, she receiving possession of 3½ annas share of the estate; that a *suluhnameh* (or deed of amicable agreement) to this effect, was executed by him, bearing date the 1st Bysack 1248 F. (7th April 1841,) but after having the deed registered he, Sujait Ali, neither paid the promised *wasilat* nor the thousand rupees, nor gave up the land, that, therefore, this action is brought for plaintiff's share of her father's estate, amounting to 2 annas, as above set forth.

The answer of Sujait Ali (appellant) is that the complaint of plaintiff is groundless, she never having been dispossessed of what she sues to recover; that after the death of Kufaitoollah, their father, Fyz Ali, became manager of the whole estate, and he (Sujait Ali) received from him what was necessary for his support; that afterwards Fyz Ali being dead, plaintiff, in collusion with his widow, Junglee Khanum, got possession of every thing, and he (Sujait Ali) could not obtain his own portion; that subsequently the lands having been resumed by Government, he (Sujait Ali) at a great expense procured the settlement of them with himself; after which a proposal was made by plaintiff that she should pay her share of the expenses attending the settlement and withdraw the actions which she had instituted *in forma pauperis*, and that upon this a *suluhnameh* was executed by him; that however, nothing came of all this, for plaintiff neither paid the promised share of the settlement expences nor withdrew the pauper suits; that she is in possession of the lands; and that consequently her claim to them, and to *wasilat* upon them, is ridiculous.

The decree of the principal sudder ameen (which is defective, in the omission of any preliminary statement whatever of the facts of the case, as set forth in the pleadings) is as follows:—"The plaintiff's right is established by the defendant's own admission; but with regard to possession, it appears from the ameen's report that she only obtained it from the time the parties entered into a *suluhnameh*, which is dated 1st Bysack 1248 F., or 7th April 1841 A. D., the plaintiff is therefore entitled to *wasilat* for the time she was out of possession; but the amount claimed by her appears to me to be much exaggerated. I am of opinion that plaintiff should receive *wasilat* from 1236 to 1247 F., a period not exceeding twelve years, at the rate of Sicca rupees 284-5 per annum, being the rateable portion of plaintiff's 2 annas share in the entire 16 annas of the estate, or in Rupees 25,016, produce, appropriated by the defendant from 1232 to 1242 F., and alluded to in the decision of the judge of Patna, dated 7th February 1838, with interest of one year from the year following, at 6 per cent per annum.

With regard to the clause entered in the *sulahnameh* above-mentioned by which the plaintiff engaged to remit the demand of *wasilat*, it is to be observed, that it was solely on consideration of the payment to her of 1000 rupees. But as the defendant has not paid her, she cannot now be held to be bound by the conditions of compromise which the defendant himself has not complied with. See case of Pertab Singh, appellant, *versus* Anund Ram Jani, respondent, page 160, Vol. VI. decided by the Sudder Dewanny Adawlut, 27th April 1837. I therefore pass a decree in favor of plaintiff, awarding a partition of the lands, villages, and ryot-khanas, already in her possession, together with *wasilat* and interest as above specified. Costs and interest thereon payable by both parties rateably.

Against this decree appellant lodged an appeal, which plaintiff has not appeared to defend; but the respondent, Mubaruk Ali, opposes it, on the ground of his having purchased (on behalf of the minors named) the lands in dispute, from the plaintiff, Torab-o-nissa, as shewn by a *cowaleh* (or deed of sale) bearing date the 12th March 1843.

The Court find, that plaintiff was in possession of the lands claimed by her, at the time she instituted this suit *in forma pauperis*; and that she was subsequently so, or had intermediately transferred them, for a due consideration, at the time the decree now appealed from was passed in her favor. Under these circumstances, the proceedings on her part, as a pauper, ought not to have been recognised, and were illegal, and the judgment passed should have been a *nonsuit*. The decree of the lower court is set aside and cancelled accordingly, with all costs payable by respondents.

THE 9TH SEPTEMBER 1846.

PRESENT:

R. H. RATTRAY and
C. TUCKER,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

NO. 106 OF 1846.

Regular Appeal from a decision of Syed Imdad Allee, Principal Sudder Ameen of Zillah Sarun, dated the 27th of February 1845.

CHOWTREEA RUN MURDUN SEIN, (DEFENDANT,) APPELLANT,

versus

SAHIB PERHLAD SEIN, (PLAINTIFF,) RESPONDENT.

Vakeel for Appellant, Gholam Sufdur.

Vakeels for Respondent, Mr. Waller, Molvy Hamid Russool, and Ameer Allee.

No. 135 of 1845.

THE SUDDER BOARD OF REVENUE, (Claimant,) Appellant,

versus

SAHIB PERHLAD SEIN and ODAIEPERTAUB SEIN, (Plaintiffs,) Respondents.

CHOWTREEA RUN MURDUN SEIN, (Defendant.) Respondent.

Vakeel for the Sudder Board, Baboo Prosonno Komar Tagore.

Vakeels for Sahib Perhlad Sein, Mr. Waller, Hamid Russool, and Ameer Allee.

Vakeel for Run Murdun Sein, Gholam Sufdur.

No. 174 of 1845.

RANEE SREEKAUNTH DEYBEE, widow of RAJAH TEJPERTAUB SEIN, (Claimant,) Appellant,

BHOGWAN LALL SAHOO,

versus

SAHIB PERHLAD SEIN, (Plaintiff,) Respondent,

RUN MURDUN SEIN, Claimant.

Vakeels for Appellant, Mr. Skinner and Abbas Allee.

Vakeels for Respondent, Mr Waller, Hamid Russool, Ameer Allee, and Ramapersaud Ray.

Vakeel for Run Murdun Sein, Mr. Colebrooke.

In elucidation of these three appeals, reference must be made to other cases out of which they arose.

On the 31st August 1835, a suit, No. 26804, was brought in the zillah court by Odaiepertaub Sein, for the *raj* of Ramnugger, against the widows of Rajah Tejpertaub Sein and Rajah Amerpertaub Sein, and Run Murdun Sein, alleging the latter to be the son of Amerpertaub by a slave girl. Plaintiff founded his claim on being heir to the late Rajah Amerpertaub Sein of Ramnugger, who died on the 10th of Aghun, 1242 Fuslee, childless; and alleged the deceased rajah and himself were descended from Rajah Mookoond Sein, who was their common ancestor. This suit was dismissed by Moolvy Fuzzle ul Huk, principal sudder ameen of Sarun, on the 7th May 1839.

On the 5th May 1836, another suit No. 26892, for possession of the *raj* was brought by Sahib Perhlad Sein, as guardian and

on behalf of his son Futteh Bahadoor Sein, against the widows of the Rajahs Tejpertaub and Amerpertaub and against Odaiepertaub Sein. Run Murdun Sein was by order of the principal sudder ameen made a defendant on the 26th March 1838. This suit too, which was grounded on the expressed will and written permission of the deceased Amerpertaub, whereby he directed his own ranee and the ranees of Tejpertaub to place Futteh Bahadoor on the *guddee* and to constitute him rajah, was dismissed by the same principal sudder ameen, on the 7th May 1839, as he held the deed filed by the plaintiff to be not proved.

Two appeals were in consequence preferred to this Court, and were heard by Messrs. Lee Warner and Shaw, Judges, on the 23d May 1842, who remanded both cases to the principal sudder ameen for re-investigation on the points indicated in their proceedings of that date, viz., to ascertain whether Run Murdun Sein had married into a rajpoot family—whether Amerpertaub Sein had married Luchmee Dayah Deybee, mother of Run Murdun Sein, according to the custom of his family: and further, having taken supplementary petitions from Perhlad Sein and Odaiepertaub Sein, to call upon them for proof of their being of the same family as the late Amerpertaub, and to pass such orders as he, the principal sudder ameen, might deem just and proper, after the requisition of the Court had been complied with, in the presence of both parties. Accordingly, the record was returned to the zillah, and the case was tried by Syed Imdad Allee, who, at that time, held the office of principal sudder ameen, and decided by him on the 27th February 1845.

All the parties named in the three appeals Nos. 106, 135, and 174, above referred to, were present in the principal sudder ameen's court.

The appeal No. 174 preferred by Ranee Sreekaunth Deybee, and others, has not been heard by the Court, as she withdrew below, and intimated that a separate action had been instituted to establish her rights in the zillah court.

An objection having been taken by the appellant Run Murdun's vakeel to the amount of the stamp on which the respondent now comes in, on the ground of which a nonsuit is claimed, the Court remark that when this case was returned by Messrs. Lee Warner and Shaw, Judges, to the zillah, for further investigation, distinct instructions were given to the mofussil authorities, part of which was, that the plaintiff be allowed to file a supplementary petition, and that the case be restored to its original number on the file. The principal sudder ameen accordingly took a supplementary petition from the respondent on a stamp of [illegible] rupees. As this was done under order of the Court, the respondent must not be held answerable for any irregularity in the mode in which his suit was admitted; and as the payment of the additional requisite fees in no

way alters the nature of the case, neither can it in the slightest degree affect the merits of it, the Court resolve to proceed with the investigation, rather than protract the decision of a matter so long pending, having taken the required fees.

The following particulars are abstracted from the record of the case as it is now before the Court, and details the various pleas urged by the parties respectively.

Sahib Perhlad Sein, the plaintiff and respondent, claims to succeed Rajah Amerpertaub Sein, who died childless, in the *raj* of Ramnugger, stating himself to be nearest of kindred to the deceased; a sharer in the estate; and also to have lived with the late rajah, conjointly. He has produced a genealogical table and several witnesses in support of it; an answer, put in by Ranee Telotema Deybee, widow of Rajah Tejpertaub Sein, in the suit brought by Odaiepertaub Sein, against herself and others; also copy of an answer filed by the Ranees Sreekaunth Deybee and Tejkomaree Deybee, widows also of Tejpertaub, in the present case, to prove that he is of the same family as the deceased Amerpertaub, and that he stands in the position in which he represents himself in the genealogical table, and is nearest of kin to the said deceased. He further pleads, that the defendant, Run Murdun, is the illegitimate son of Amerpertaub by Luchmee Dayah, a slave girl, of low caste, and is not entitled to succeed to the *raj*. To prove this, he quotes the answer of Ranee Telotema, and relies on the witnesses he has cited, and puts in the following documents.

Exhibit No. 1. Copy of an application made by Rajah Amerpertaub to have his name registered by the collector of Sarun, dated 28th August 1832, as rajah of Ramnuggur, in succession to Tejpertaub Sein, who demised on the 9th of June previous.

Ext. No. 2. Copy of Amerpertaub's petition, dated 17th October 1832, to the collector, setting forth that the succession to the *raj* always goes according to the custom of the family in the male and not in the female line.

Ext. No. 3. Copy of a petition from the same to the same, dated 21st March 1833, to shew the *raj* and estate are hereditary, and were not acquired by Doorg Beejye Sein.

Ext. No. 4. Copy of a *wurrasutnameh*, dated 5th December 1834, admitted by the defendant to have been filed on the part of Ranee Amer Raj Luchmee Deybee, setting forth that Amerpertaub died childless on the 10th Aghun 1242, and that she is the only surviving heir to the rajah.

Ext. No. 5. Copy of a report from the commissioner of the division, Mr. Tucker, to the Sudder Board of Revenue, dated the 6th April 1836, stating the Rajah Amerpertaub had died childless.

Ext. No. 6. Copy of a robikaree by the magistrate of Sarun, dated 3rd March 1836, setting forth that Sreenath Oojha, *mooktear* of Amer Raj Luchmee, stated to that officer when at Bagh

Ramnugger that Run Murdun was the son of Luchmee Dayah Bhiteranee; that she was 40 years of age, and Run Murdun was Chowtreea. Recognizances for the attendance of one Soondermun Ray were taken from Run Murdun and his mother Luchmee Dayah under this proceeding.

Ext. No. 7. Copy of recognizance given by Luchmee Dayah before the magistrate, in which she is styled the *second wife* of Amerpertaub Sein, bearing date 29th April 1836.

Ext. No. 8. Copy of a petition from Run Murdun presented to the session judge with order of the 16th April thereon, confirming the requisition of recognizance from Luchmee Dayah Deybee.

Ext. No. 9. Is the answer of Ranee Telotema, widow of rajah Tejpertaub, dated the 9th March 1836, to the plaint of Oodaiepertaub Sein, in which she states deceased Amerpertaub declared Perhlad Sein to be in the 5th degree from Rajah Pertaub Sein, and that Amerpertaub nominated Futteh Bahadoor, Perhlad Sein's son, to succeed him in the *raj* and to be invested with the *teelok*, in which she also calls Run Murdun the son of a slave girl.

Ext. No. 10. Answer of Run Murdun Sein in the case of Oodaiepertaub, dated 10th May 1837, in which he states he is the son of the *second wife* of Amerpertaub.

Ext. No. 11. Supplementary petition of the 7th July 1838, from Ranee Amer Raj Luchmee Deybee and Chowtreea Run Murdun Sein; alleging, the latter is the son of Amerpertaub by the *first wife* Luchmee Dayah Deybee. This was filed in the action brought by Perhlad Sein on behalf of his son Futteh Bahadoor *v.* the petitioners and others.

Ext. No. 12. Answer of ranees Tejkomaree and Sreekaunth Deybee in the case just alluded to, Perhlad Sein *v.* the above ranees, Oodaiepertaub Sein, Amer Raj Luchmee Deybee, and Run Murdun Sein, dated 15th December 1838, acknowledging Perhlad Sein to be within the 5th degree from Rajah Pertaub Sein, and stating the deceased Amerpertaub directed that the *raj* should be given to Futteh Bahadoor the son of Perhlad Sein.

Ext. No. 13. Copy of a petition by Run Murdun to the collector, dated 14th December 1839, styling himself the son of the second wife, and Amer Raj Luchmee Deybee, the third wife of Amerpertaub Sein.

Ext. No. 14. Copy of a robikaree by the assistant collector of Sarun, dated 15th August 1837, refusing to receive a list of village officers, proffered by Run Murdun and Amer Raj Luchmee Deybee, conjointly; and directing that the list should be taken from her only, being in possession. In this Run Murdun is styled son of the *second wife.* Ranee Telotema's statement in this case styles Run Murdun the son of a slave girl and not entitled to the *raj.*

Ext. No. 15. Copy of a reply made by Rajah Hurkoomar Dutt Sein in his suit against Beerkishen Sing.

Ext. No. 16. The petition of appeal put in on the part of the Government.

Ext. No. 17. *Vyavustha* of the pundit of the Patna Court.

Ext. No. 18. *Vyavustha*, given in a case, reported at Vol. III. page 132, of the Sudder Dewanny Reports, on the requisition of Mr. C. Smith, Judge of the Court.

On the part of the defendant Run Murdun Sein, it is urged, that he is the son of Amerpertaub by Luchmee Dayah Deybee his *first wife;* that the marriage took place in 1216 Fusilee at Ruttenpoora, in pergunnah Mujhooa, in due form; that his mother died in 1226 Fusilee; that Perhlad Sein is not of the same family as Amerpertaub; that the funeral ceremonies of Amerpertaub were performed by him, defendant, not by Perhlad Sein; that the writer of Ranee Amer Raj Luchmee's statement of the 6th October 1836, in which he, defendant, is styled the son of the second wife, made a mistake, corrected by a supplementary petition on the 7th July 1838; that he in fact is the son of the first wife; that ranee Amer Raj Luchmee's name was entered in the collector's books with his concurrence; that they have both been in joint possession, and that he is entitled to the *raj.* In support of his claims he filed the following documents.

Exhibit No. 1. A *firman* dated the 22d Sheher Rubbeeosanee in the 15th year of the reign of Alimgeer of the year 1083 Hijree, to prove the *raj* of Ramnugger was founded by Doorg Beejye Sein.

Ext. No. 2. A *firman* dated the 12th of Rajjub in the 6th year of the reign of Furrookh Seer, granting 30 tuppahs to Ram Dutt Sein, son of Doorg Beejye Sein.

Ext. No. 3. Copy of roobikaree by the judge of Goruckpore, of the 16th January 1828, in a case under Regulation VI. of 1813, in which Run Murdun Sein is styled baboo and Amerpertaub Chowtreea, and this during Tejpertaub's life time.

Ext. No. 4. Copy of proceeding before Mr. Lambert in the Patna provincial court, as above, of 30th May 1828.

Ext. No. 5. Copy of a mortgage bond of the 25th January 1822, given by Izzut Khanum to Run Murdun Sein Baboo, son of Chowtreea Baboo Amerpertaub Sein.

Ext. No. 6. Copy of a conditional deed from the same to the same.

Ext. No. 7. Copy of a statement made by Girdharee Lal, servant of Ranee Telotema, before the darogah of Bunjareea, zillah Sarun, dated the 11th November 1832.

Ext. No. 8. Proceeding of the Sudder Dewanny Adawlut before Mr. D. C. Smyth of the 3d October 1836.

Ext. No. 9. Copy of a roobikaree by the deputy opium agent, dated 9th June 1837, wherein mention is made of Chowtreea Run Murdun Sein.

Ext. No. 10. Copy of a report from the darogah of Bunjareea, of 16th September 1837, stating the funeral obsequies of Ranee Telotema were performed by Run Murdun Sein and Amer Raj Luchmee Deybee.

Ext. No. 11. Copy of a *purwaneh* addressed by the magistrate of Chumparun, dated 12th February 1838, to ranee Amer Raj Luchmee Deybee and Chowtreca Run Murdun Sein.

Ext. No. 12. *Purwaneh* from the deputy collector, of April 1838, addressed as above.

Ext. No. 13. *Purwaneh* from the deputy opium agent, dated 4th May 1837, addressed to Run Murdun Sein.

Ext. No. 14. *Purwaneh* of the 19th February 1838, from the magistrate to Chowtreca Run Murdun Sein, to apprehend Soondermun Ray.

Ext. No. 15. Another *purwaneh* from the magistrate, dated 9th March 1838, addressed to Chowtreea Run Murdun and Ranee Amer Raj Luchmee Deybee.

Ext. No. 16. Copy of a proclamation by the collector, of the 19th December 1839, or 28th Aghun 1247 Fusilee, giving notice that Rajah Run Murdun Sein had applied to have his name, with that of his mother Ranee Amer Raj Luchmee Deybee, entered in the collectorate, and calling for attendance of persons objecting.

Ext. No. 17. Copy of judge's robikaree of the 18th January 1840, reporting publication of the above in his court

Ext. No. 18. Report of five village officers, *mirdahs*, stating that Ranee Amer Raj Luchmee Deybee had put Run Murdun Sein on the *guddee* as rajah.

Ext. No. 19. Copy of robikaree of collector of Sarun, dated 27th March 1840, to the deputy collector of Chumparun.

Ext. No 20. Copy of report from the darogah of thanah Bagha, of 7th March 1840, that information of the death of Ranee Amer Raj Luchmee Deybee had been given by Perhlad Sein, and that Run Murdun was about to perform her funeral rites. The darogah sent a jemadar and others to Russoolpoor to prevent disputes, who, on their return, said Run Murdun had performed the ceremonies and left for Ramnugger, before the police reached their destination.

Ext No. 21. Copy of robikaree of the special deputy collector of Shahabad, of the 6th May 1840, in the case of Government *versus* Rajah Run Murdun Sein, dismissing the claim to resumption of certain lands in the Ramnugger estate.

Ext. No 22. Copy of *purwaneh* from the collector of Sarun, of 13th May 1840, to Chowtreea Run Murdun Sein, calling for *zemindaree* papers.

Ext No. 23. Copy of a sale proceeding by the collector of Goruckpore, dated 17th September 1841, under which the village of

Khullelabad was sold in execution of decree in the case of Thakor Persaud, decreeholder, *versus* Run Murdun Sein.

Ext. No. 24. Copy of a petition, dated the 5th May 1842, presented by Bhoop Sing, *mokteear* on part of Rungnath Pundit, Kishen Pundit, Narain Pundit, and Bishen Pundit, holders of *birt* rent-free lands in the village of Khujooreea, Kut Suckree and others, pergunnah Mujhooa, to the collector of Sarun, to prove enmity between the above individuals, in this case witnesses, and the defendant.

Ext. No. 25. Copy of robikaree of the collector of Sarun, 6th January 1844, in the above case, attaching the *birt* lands alluded to.

Ext. No. 26. A list of village watchmen in thanah Bunjareea for 1241 and 1242 Fusilee, showing that village Phoolkool was in farm to Bukhtaram Khan on part of Amerpertaub, and does not belong to Perhlad Sein.

Ext. No. 27. Copy of a proceeding in the Sudder Dewanny Adawlut, before Mr. J. F. M. Reid, dated 7th November 1840, with *vyavustha* of the pundit of the Court, in the case of Oodaiepertaub Sein *versus* Ranee Amer Raj Luchmee Deybee and others, declaratory of the right of an illegitimate son of a rajpoot to succeed, and setting forth that rajpoots are of the sooder caste.

Ext. No. 28. Receipt signed by Shumsheer Bahadoor, of the 11th September 1829, acknowledging 1500 rupees to have been paid by Run Murdun Sein, son of Chowtreea Amerpertaub, for the village Pawa Ghose, &c.

Ext. No. 29. Deed of sale from above to Run Murdun of the same date.

Ext. No. 30. A genealogical table drawn out and signed by baboo Kaloo Khan Ram and Cheit Khan Ram, shewing Run Murdun to be the son of Amerpertaub and Luchmee Dayah Deybee his wife.

Ext. No. 31. A *nagree* letter from Kaloo Khan Ram to Run Murdun, dated 14th Poos, Sumbut 1901, forwarding the above.

Ext. No. 32. A *nagree* letter from Futteh Jung Shah, the minister of Nepaul, to Rajah Run Murdun Sein, dated Phalgoon Soodee 1st, 1900 Suk.

Ext. No. 33. A decision of the Sudder Dewanny Adawlut of the 12th August 1817, in the case of Hujmu Chul *versus* Ranee Bhadoorun, to shew that the son of a *cheytree* married to a woman of the Gholotine caste, by the form of *gundhurba*, is a legitimate son, and succeeds, though the nephews and grandsons on the daughter's side are alive, under the *shastre* prevailing in the district of Etaweh.

The answer of Ranee Amer Raj Luchmee, filed on the 6th October 1836, is a denial of plaintiff's connexion with the family,

pleads that herself and Run Murdun were in joint possession, and by a supplemental petition she declares him to be the son of Amerpertaub by his first wife.

In the answer of Ranee Sreekaunth Deybee and Ranee Tejkomaree Deybee, of the 15th December 1838, filed through Casseeram, *mooktear*, they admit plaintiff's right.

On the 14th December 1844, Sreekaunth Deybee repudiated her former answer and withdrew from this case.

The answer of Oodaiepertaub Sein, dated 26th May 1843, denies the plaintiff's right: he has not however appeared to appeal in this Court.

The principal sudder ameen, Syed Imdad Allee, on the 27th of February 1845, decided in favor of the plaintiff, Perhlad Sein, declaring him to be the nearest of kin to the deceased Rajah Amerpertaub Sein, and within the 6th degree from the common ancestor of the deceased and the plaintiff. He pronounced Run Murdun Sein to be the illegitimate son of the deceased Amerpertaub, and consequently not entitled to succeed to the *raj* of Ramnugger. This decision necessarily put aside all claim to the estate on the part of Government, who came in on the ground of an escheat. No decision was passed by the principal sudder ameen as to the right of Sreekaunth Deybee. As the Ranee is not by her own act a party to this suit, and her case is pending elsewhere, the Court decline interfering with, or prejudging a matter not before them. The final order of the principal sudder ameen decreed possession of the rajah's estate to the plaintiff, and awarded the sum of 500 rupees per month to Run Murdun, payable from the amount in deposit in the collector's office, from date of attachment, and henceforward from the estate, on the ground of his being the illegitimate son of the deceased Rajah Amerpertaub.

Three appeals, as has already been shown, were preferred against the principal sudder ameen's decision; of these, one, that of Sreekaunth Deybee, has been thrown out by the Court for the reasons above assigned.

The appeal of Run Murdun Sein reiterates all the arguments, and refers to all the proofs brought before the principal sudder ameen on the subject of his, defendant's, legitimacy; and further urges that, though illegitimate, he is entitled to the raj.

The appeal on the part of Government sets forth that neither plaintiffs nor the defendants are entitled to succeed to the *raj* of Ramnugger, the late rajah having died childless, and urges, the late Ranee Amer Raj Luchmee having died since her husband demised, the estate is an escheat to the Government. The appeal is, the Court consider, merely a declaration of the right of the Government to take possession in the event of no heir being forthcoming, and the terms of it clearly waive all pretensions should an heir be acknowledged by the courts.

By the Court.

The judgment of the Court is called for on three questions, which they propose to take up in the following order, as the decision of the first, in favor of the defendant, settles the right of succession at once without reference to the other two; and the decision of the second, should the first point for investigation (the legitimacy of Run Murdun) not be established to their satisfaction, disposes of the third, if the plaintiff proves himself to be the nearest of kin to the deceased Rajah Amerpertaub Sein and entitled under the Hindoo law to succeed him.

The questions above referred to are:

1st. The legitimacy of Run Murdun Sein, the defendant:

2nd. The degree of affinity between the plaintiff, Perhlad Sein, and the deceased:

3rd. The right of Government to the escheat in failure of all heirs.

Before entering upon the subject of the legitimacy of Run Murdun Sein, the Court deem it necessary to record their opinion on the admissibility of his second plea, urged in appeal, viz. that, though illegitimate, he is entitled to the *raj*. They remark that the point at issue between the plaintiff and defendant, Pèrhlad Sein, and Run Murdun Sein, is legitimacy or illegitimacy. In the plaint it is distinctly set forth that the defendant is illegitimate, and in the answer, as plainly, that he is legitimate: this was the only and single issue before the lower court, and that court could only try that issue and determine upon it. The defendant took his own course and adopted this one plea, that he was the legitimate son of the deceased rajah. The principal sudder ameen decided that he failed to prove his plea, and declared him illegitimate. The admission by this Court of an appeal on the ground that though Run Murdun is illegitimate, he is entitled to succeed, would be the recognition of a new question never before the lower court; in fact of a suit in the first instance by an appellate court. Below, the decision as to the right to the *raj* was passed on a point of fact, legitimacy; not on a point of law, right of succession under acknowledged illegitimacy. The plea of legitimacy urged by the defendant involves a denial of the plaint: that of right of succession under illegitimacy, *now* urged, had it been set up originally, would have required admission of the plaint and rested the defendant's rights on the law of succession under such circumstances. The Court therefore barred the appellant's right to urge new matter in the appellate court; and, having restricted him to the proof of the plea of legitimacy, on which he grounded his defence, now proceed to the investigation of that point in the first instance. In order to prove his plea the defendant has cited numerous witnesses, whose evidence, so far as it goes, proves him to be the son of Amerpertaub by his first wife,

Luchmee Dayah Deybee. The Court cannot however rely upon the bare assertions of such witnesses, unsupported by corroborative circumstances, by which its integrity may be tested; and first they will examine the documentary proof put in, to establish the fact of legitimacy.

Exhibits Nos. 1 and 2 do not touch the point at all.

Ext. No. 3 shews that one Sheikh Hinga with others, petitioners, applied to the judge of Goruckpore for execution of decree under arbitration and the provisions of Regulation VI. of 1813, in a case against Run Murdun Baboo and Chowtreea Amerpertaub: the case was struck off the file.

Ext. No. 4. A proceeding in the Patna provincial court is, as above, foreign to the point of legitimacy, and the defendant appears in it as Baboo Run Murdun Sein.

Ext. No. 5 is copy of mortgage bond. The question of legitimacy is not established by mere mention of the defendant's name as son of the deceased.

Ext. No. 6. Copy of a deed of conditional sale by the same to the same. The same remark applies.

Ext. No. 7. Copy of a statement by Girdharee Lal, servant of Ranee Telotema, before the darogah of Bunjareea, zillah Sarun, in which mention is made of Run Murdun Sein, son of Baboo Chowtreea Amerpertaub.

Ext. No. 8. Copy of proceedings before Mr. D. C. Smyth, of the 3rd October 1836, referring to a petition of Ranee Amer Raj Luchmee and Run Murdun Sein, son of the second wife of Amerpertaub, presented to the Sudder Dewanny Adawlut; and the Court's order admitting them to appear in *in loco* Amerpertaub *versus* Ram Dutt Missur. This was a miscellaneous proceeding in the department of preparation of suits with the view to the final disposal of the suit. The action was to assess certain lands held by the defendant, and the point of legitimacy was not the issue between the parties.

Exts. Nos. 9, 11, 12, 13, 14, 15, are all documents put in to establish one and the same point, namely, that the defendant was addressed as Chowtreea Run Murdun Sein by the deputy opium agent, the deputy collector, and the joint magistrate.

Ext. No. 10 is a report from the police darogah of Bunjareea, to the effect that Run Murdun and Amer Raj Luchmee Deybee had performed the funeral obsequies of Ranee Telotema: this cannot be taken as any proof of Run Murdun Sein's legitimacy and his descent from Amerpertaub.

Ext. No. 16 is copy of notice issued by the collector, dated the 19th December 1839, stating that Rajah Run Murdun applied to have his name and that "of his own mother Ranee Amer Raj Luchmee" entered in the collectorate. This application bears date subsequent to the institution of the suit in 1836; and the title of

Rajah assumed by Run Murdun in his petition is no proof of his right to it or of his legitimacy.

Ext. No. 17. A copy of the judge's robikaree, reporting the above notice was duly issued in the court.

Ext. No. 18. A report by the village officers, *mirdahs*, dated the 1st February 1840, to the collector, stating Amer Raj Luchmee Deybee had placed Run Murdun Sein in possession of the *raj* and the *guddee*. This too was subsequent to the institution of this suit and long after disputes for the *raj* were before the courts: the ranee died a few days subsequently on the 24th of the month.

Ext. No. 20 is copy of report from the darogah of Bagha, dated the 7th March 1840, giving notice of the death of Ranee Amer Raj Luchmee, and stating that Run Murdun had performed her funeral obsequies before the police reached Russoolpore, and had left for Ramnugger. The remarks on exhibit No. 18 apply to this document.

Ext. No. 21 is put in merely to prove that Run Murdun was styled rajah in a proceeding before the collector.

Exts. Nos. 24, 25, 26, do not touch on the point of defendant's legitimacy, but are put in for the purposes indicated in the list of exhibits.

Ext. No. 27. Contains the answer of the pundit of this Court to a requisition of Mr. Reid, one of the Judges, and is declaratory of the right of a son born to a Rajpoot, by a woman not of equal rank, to succeed to his father's property, though kindred of a nearer degree are alive. This exposition does not of course apply to defendant's plea of legitimacy.

Exts. Nos. 28 and 29. In these Run Murdun Sein is styled the son of Chowtreea Amerpertaub, and purchaser of village Pawa Ghose, and others, for 1,500 rupees.

Ext. No. 30. A genealogical table prepared by the relatives of Luchmee Dayah Deybee, and

Ext. No. 31. A *nagree* letter from them to Run Murdun, forwarding the same to prove defendant is the son of Amerpertaub.

Ext. No. 32. A *nagree* letter from Futteh Jung Shah, the minister of Nepaul, bearing the address of Rajah Run Murdun Sein.

Ext. No. 33. Does not apply to a case of succession by a legitimate son.

The Court observe that in only four of the above-mentioned documents is the defendant called the son of Amerpertaub, and that the term is equally applicable were he the legitimate or illegitimate offspring of the deceased Rajah. In the remaining documents he is styled Baboo Chowtreea, and Rajah, by himself; or these forms of address have been adopted by private individuals on the occasion of their transacting business with him, or by Government officers in matters totally unconnected with the defendant's right to assume the title, and without reference to its validity.

But other circumstances must be taken into consideration by the Court in the disposal of this case; and the following remarks arise out of the defendant's own statement. It appears the late Rajah Amerpertaub died in 1834 A. D., at which period the defendant was of age, and was about 18 years old. Amer Raj Luchmee Deybee, the surviving widow, on demise of the Rajah applied to have her name registered in the collector's books, setting forth that Amerpertaub had died childless and that she was his sole heir. The defendant alleges that the registry of her name was made with his concurrence, and he accounts for the delay which has occurred in the registry of his own name, by stating it is not customary in his family so to do, till one twelve month has elapsed from the date of the former rajah's death; but the record shows that Ranee Amer Raj Luchmee Deybee was, till the time of her death in 1840 A. D., the recorded proprietor of the estate, and up to that date the defendant was not known to or recognized by the Government officers as heir to the *raj*. Moreover the defendant does not impugn the Ranee's assertion that Amerpertaub died childless, nor does he explain how such an assertion was allowed to appear in the Ranee's petition and remain uncontradicted by himself.

Ranee Amer Raj Luchmee Deybee, in her answer, dated the 6th October 1836, to the plaint filed by Perhlad Sein on behalf of his son Futteh Bahadoor, stated Run Murdun was the son of Amerpertaub by his second wife. She filed a supplemental petition on the 7th July 1838, to the effect that the writer of the above answer had by mistake styled Run Murdun the son by the second wife, that in fact he was the son by the first wife of Amerpertaub. Run Murdun also, on the 21st of the same month, in his answer, claimed to be the son of the first wife.

On the record of the case Oodaiepertaub Sein *v.* Ranee Amer Raj Luchmee, Chowtreea Run Murdun Sein, and others, for possession of the *raj*, the Court find that the ranee in her answer of the 30th May 1836, and Run Murdun in his of the 10th May 1837, both stated the latter was the son of the second wife. These mistakes do not appear to have been detected or rectified up to the present date; but the most unaccountable circumstance remains to be mentioned, viz. that after the deliberate correction of the alleged mistake as to his mother being the second wife of Amerpertaub, Run Murdun in a petition to the collector, (vide exhibit No. 13, filed by the plaintiff,) dated the 14th December 1839, again calls himself son of the second wife, adding that the rajah's first wife died childless, and that Amer Raj Luchmee Deybee was his third wife.

Where the defendant himself and his step mother throw so much doubt on his maternity in legal proceedings filed in court, it becomes difficult indeed for the Court to declare who was his mother, and they can place but little confidence on the evidence of the numerous witnesses who have sworn to the notoriety of Run Murdun being the

son of Amerpertaub's first wife, to the caste and rank of defendant's alleged mother, and to the ceremonies performed on the occasion of her marriage with the rajah. The doubt in which the real parentage of the defendant is involved is greatly enhanced by reference to exhibits Nos. 6 and 7, filed by the plaintiff, wherein (vide No. 6) Luchmee Dayah Deybee, designated the second wife of Amerpertaub and mother of Run Murdun Sein, is reported still alive in 1836, and recognizances were taken from her (vide No. 7,) which facts have not to this day been denied by Run Murdun Sein. The above facts also warrant the Court's rejection of the evidence of defendant's witnesses, who depose to Luchmee Dayah's death, seventeen years previous, in 1225 Fusilee. An amendment on a point so material to the issue of the suit, on which indeed the whole case hinged, after the lapse of so many months, the Court hold to be hardly admissible; and they further remark, that for a period of five years from the date of his alleged father's death, and of three years during which the right to the *raj* was in litigation, the point on which the defendant rested his claim was not, as it ought to have been, directly and fixedly pleaded and adhered to.

The defendant's case, with reference to the above, combined with what will be found hereafter recorded, is altogether so unsatisfactory that the Court have no hesitation in giving judgment against him.

Having disposed of the first question which it was proposed to consider, the Court go on to enquire into the degree of affinity which existed between the deceased rajah and the plaintiff, Sahib Perhlad Sein; and to the evidence and documents brought forward in support of his claim. They observe that so far as credibility can be attached to the depositions of the witnesses, the plaintiff has established his claim to succession. The *poorohit* of the family Sreekishen Opadhya, and Sheo Dyal pundit, the nephew of another priest, "the gaitree gooroo" of Amerpertaub and Tejpertaub, both verify the genealogical table filed by the plaintiff, and swear that Run Murdun Sein is the son of a slave girl named Luchmee Dyah: who was his father they know not, and they refer to her for an answer on that head.

Surbnaraiun, a *moktear*, formerly in the service of Tejpertaub and Amerpertaub, afterwards in that of the Ranees Tejkomaree, Telotema, and Sreekaunth Deybee, up to 1246 Fusilee, then attached to the *surbarakar* establishment, swears to the descent of Perhlad Sein and to his performance of the funeral obsequies of the late Amerpertaub.

Rajah Run Bahadoor Chund and others depose to the same effect, as do Kaladhur pundit, Bishen pundit, Kishen pundit and Rogonath pundit, the *gooroos* of the rajah of Nepaul. The evidence of the pundits, however, it must be stated, is impugned by the defendant, who has filed documents to shew that he has disputes with them regarding the resumption of certain lands.

Although the evidence on both sides may be open to the imputation of bias in favor of the parties respectively, yet the witnesses for the plaintiff would appear, from the nature of the offices held by the first two named, and from their connection with the family, to have had better opportunities of being acquainted with the facts of this case, than those for the defence; though some of them too, seem to have been to a certain extent cognizant of the family's circumstances; but taking every thing into consideration, the Court are disposed to give greater weight to the plaintiff's than to the defendant's witnesses.

With respect to the documentary proof put in by the plaintiff, the Court record the following remarks.

Exhibit No. 1. This proves that the late rajah Amerpertaub, immediately on the death of his brother Tejpertaub, applied for the registry of his name in the collector's books, and did not await the lapse of 12 months for the performance of the ceremony *birkhee.*

Ext. No. 2, is Amerpertaub's declaration that the *raj*, according to the custom of the family, went in the male and not the female line, and refers to the succession of Hurkomar Dutt his father, on the demise of Koomaree Dutt his (Hurkomar's) brother, though the widow of Koomaree Dutt was alive.

Ext. No. 4 is a copy of a genealogical table, *wurasutnameh*, admitted by Run Murdun to have been filed on behalf of Ranee Amer Raj Luchmee Deybee. In this document the rajah is said to have died childless; and the defendant, till the 10th May 1837, never took objection to this statement, so inimical to his rights.

Ext. No. 5, shews that no son of Amerpertaub had, up to April 1836, appeared before the commissioner of the Patna division, to claim as heir to the rajah, who was reported by the commissioner to the Board of Revenue to have died childless.

Ext. No. 6. By this it appears that Luchmee Dayah was alive, and called on by the joint magistrate to give recognizances, in the year 1836 A. D. or 1243 Fusilee; whereas the witnesses for the defence depose to her death in 1226 Fusilee, seventeen years previous.

Ext. No. 7 is copy of the recognizance so given by Luchmee Dayah Deybee the "second wife of Amerpertaub."

Ext. No. 8, does not bear on the case at all.

Ext. No. 9, is to shew that Ranee Telotema, in July 1836, admitted Perhlad Sein was in the 5th descent from Rajah Pertaub Sein, and that she considered Run Murdun to be the son of a slave girl.

Ext. 10, proves Run Murdun's own admission, in May 1837, in answer to Oodaiepertaub's plaint, to the effect that he was the son of the second wife.

Ext. No. 11, proves that the above allegation was, in July 1838, denied by both Run Murdun and Ranee Amer Raj Luchmee Deybee.

Ext. No. 12, proves that the Ranees Tejkomaree and Sreekaunth Deybee, in their answer of December 1838 to the action brought by Perhlad Sein, at that time acknowledged him to be in the 5th degree from Rajah Pertaub Sein. Sreekaunth Deybee, after the case was remanded for further investigation by this Court, denied the above answer.

Ext. No 13, shews Run Murdun, in December 1839, styled himself the son of Amerpertaub by his second wife, when he applied to have his name registered in the collectorate. This petition is not denied by the defendant.

Ext. No. 14. The defendant has not shown that he appealed against this order of the assistant collector of Sarun, refusing to acknowledge him in possession, and declaring that Amerpertaub died childless. In the assistant's proceedings the defendant is styled, in the petition of Ranee Telotema which is a part of it, the son of a slave girl.

Ext. Nos. 15 and 16 call for no comment.

Ext. No. 17. The *vyavustha* of the pundit of the Patna court, which declares Perhlad Sein to be the 7th in degree from Rajah Pertaub Sein and entitled to succeed Amerpertaub, sets forth that Run Murdun, being the son by a woman of inferior caste, has no title, save to maintenance.

Ext. No. 18, is copy of a decree of the Sudder Dewanny Adawlut with *vyavustha* of the pundits of the Court, (vide page 132 Vol. III. Macnaghten's Reports,) which declares an illegitimate son, that is one by a woman of an inferior caste and not married, entitled to maintenance only.

Many remarks applicable to the plaintiff's case have necessarily been anticipated by the Court in their comments on that brought forward by the defendant; and but few observations remain to be made. The Court have already stated their reasons for preferring the parole evidence of the plaintiff to that of the defendant; they now proceed to shew the grounds on which greater weight is given to the plaintiff's than to the defendant's documents.

It will be seen that plaintiff's claim has been formally acknowledged by parties concerned, in legal pleadings before the courts where the right of succession to the *raj* was pending.

Exhibits Nos. 9 and 12 by plaintiff.

That the defendant's own statements and those of his stepmother, as to his maternity, have been most contradictory and irreconcilable.

Exhibits Nos. 10, 11, 13.

That the defendant is distinctly stated in Ranee Telotema's answer to be the son of a slave girl.

Exhibit No. 9.

That in the *wurasutnameh* filed by Ranee Amer Raj Luchmee no mention at all is made of defendant: on the contrary she states the rajah died childless.

Exhibit No. 4.

That the defendant was guilty of great neglect in the commissioner's office, and continued that neglect up to the year 1840 in the collectorate; and that there are no ostensible or even reasonable grounds for believing that the above documents were filed under any influence exercised by the plaintiff.

Exhibit No. 5.

Such culpable neglect on the part of the defendant to assert his rights from 1834 A. D., the year of his alleged father's death, to the year 1840, A. D., when the estate was attached as an escheat by the Government, can hardly be accounted for, but on the supposition that he was aware he had no legal right to the *raj*.

The denial of the defendant is not, the Court observe, sufficient to refute the plaintiff's affinity to the deceased rajah. Though the slightest allusion has not been made by the defendant to the plaintiff's ancestry, yet his relations (parties with whom defendant also claims relationship) have acknowledged him as a member of the family; and the defendant's plea of plaintiff's non-affinity would, the Court think, have obtained much support, had the defendant established who the plaintiff (a party well known to him, at all events since the commencement of this litigation) is, and what his lineage and descent.

After duly considering all that has been urged, and after a careful perusal of all the papers on the record, the Court are unanimously of opinion that the defendant Run Murdun Sein has not proved himself to be the legitimate son of Amerpertaub Sein, and that the plaintiff Sahib Perhlad Sein has established his affinity to Rajah Pertaub Sein in the 6th degree, and his consequent right of succession to the late Rajah Amerpertaub.

In support of their view of the law of succession as laid down in this judgment, the Court have the benefit of the recorded opinions of Messrs. John Herbert Harington and James Stuart, former Judges, in the case of Gunga Dutt Jhah *v.* Sreenaraiun Ray and others, reported at page 11 of Vol. II. of the Sudder Dewanny Adawlut Selected Reports for the year 1812; on reference to which it will be seen that the claims of paternal kindred who are *sapindas*, which relation includes the descendants of a paternal ancestor in the 6th degree, were considered preferable in law to those of maternal kindred, cognates. This decision clearly defines the right of *sapindas* and indicates who are so called. It was the result of *vyuvusthas* given on the requisition of the presiding judges by the pundits of the zillah courts of Poornea and Tirhoot, of the provincial courts of Patna, and of the law officers of the Sudder Dewanny Adawlut, in opposition to that of the pundit of the Moorshedabad court of appeal, who declared the defendants in the case, though descendants

in the 6th degree, not entitled to succeed before the maternal first cousin, the plaintiff; and is in accordance with the law obtaining in Mithila, by which the decision in this case must also be guided.

The Court having already declared the defendant not to be the legitimate son of Amerpertaub, no question can of course arise as to the preference to be given to the plaintiff or defendant on the score of affinity. The precedent is quoted to prove who are under the Hindoo law considered *sapindas*, to shew that in the absence of nearer kindred they succeed, and with the view to determine the third question which they proposed to take up.

The decree which they now pass in favor of the plaintiff sets aside the claim of an escheat urged by the Government. On this point they have to observe that in the case before them several parties were in Court claiming to succeed to the *raj* by right of inheritance, and, until the absence of all heirs under the Hindoo law should be declared, the intervention of the Government officers was premature.

The Court amend so much of the principal sudder ameen's orders as awards 500 rupees per month as maintenance to the appellant, and dismiss the appeals, with costs against the appellants respectively. The respondents' costs in case No. 174 to be paid by Sreekaunt Deybee, and her own stamp fees to be returned to her.

Two genealogical tables are appended:

No. 1, to shew the relative position of the parties in these cases; and,

No. 2, to shew who were considered *sapindàs* in the decree quoted as a precedent in these proceedings.

THE 14TH SEPTEMBER 1846.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

CASE NO. 8 OF 1845.

Regular Appeal from decision of Principal Sudder Ameen of Tirhoot.

BABOO CHOONEE LAL, MOHUN LAL, AND KUNNAHEE, (PLAINTIFFS,) APPELLANTS,

versus

DIRGOPAUL SAHEE, AND OTHERS, HEIRS OF SUNKUR DUTT SAHEE, (DEFENDANTS,) RESPONDENTS.

Vakeel of Appellants—Gholam Sufdur.

Vakeels of Respondents—Mr. Waller, Neelmonee Bannerjea, and Ameer Allee.

PLAINT, 19th January 1844, or 14th Maugh 1251 Fuslee.

For possession of 250 beegahs in Burearpore Rodun, tuppah Bhatsaleh, pergunnah Besara, with wasilat Sicca rupees 3,627. prin-

cipal and interest, from 1246 to 1250 Fuslee. Action laid at Company's rupees 9,203-1-1.

The village Burcarpore Rodun, with its dependencies, malikana and altumgha rights, is, the plaintiffs' state, their ancestral property and in their possession, in which the defendants have certain rights as ryots. The proprietor of the indigo factory of Moteepore, in collusion with them, to whom plaintiffs allege they refused to give a farm, has collected the rents on 250 beegahs, which the defendants held as ryots, under the name of tolah malikana Burcarpore, from 1246. Thereon disputes arose in the foujdaree court. When these were disposed of, plaintiffs demanded rents from the ryots, and then sued them with the factory for rupees 2,448 balance of rent. On the 5th September 1843, the principal sudder ameen dismissed their plaint, as the claim for rent was not admissible, till the right to the land was established. Plaintiffs now sue for possession of land as detailed in the plaint, with mesne profits from 1246 to 1250. The defendants were directed to sue to prove their title to malikana. This order they have never carried out. Plaintiffs have therefore brought them into court as above, and claim mesne profits till they regain possession.

Answer of the defendants. They state that they were not parties to the suit for balances; that the date of dispossession should have been specified; that the plaintiffs have purposely concealed this, because their ancestor from the year 1789 A. D. never received any rents, and consequently the statute of limitations applies to this case; that Lal Bahadoor, the uncle of the plaintiffs, sued Bussun Sahee, father of defendants, for rents of 1214 and 1215 Fuslee. The moonsiff dismissed their claim on proof of defendants' malikana, and this was affirmed by the molovy in 1810 A. D. The plaintiff was told to sue to establish his proprietory right in the first instance, but he never did so. From that date to date of plaint, 34 years have elapsed. Lal Bahadoor, the uncle, Run Bahadoor, father of the plaintiffs, sued Bussun Sahee and Sunker Dutt Sahee for 56 beegahs in Burearpore, claiming them as a portion of 200 beegahs granted to their ancestor by rajah Moorlee Dhur. The assistant judge dismissed their plaint on the 29th March 1814. In the Patna court of appeal, this order was upheld on the 29th December 1818, since which the plaintiffs have never demanded rents from them.

Plaintiffs, in reply, state they have never been dispossessed, but that defendants, with Mr. Taylor, collected their rents in 1245, and that the principal sudder ameen having ordered them to sue to establish their proprietory right, this action is brought; that the defendants' ancestor held a jageer during pleasure from their (plaintiffs') ancestor; that they, defendants, by degrees took possession of 56 beegahs in excess; and that the suit disposed of in the court of appeal at Patna was for this land; that the defendants have never

proved their right to malikana: and that as the jageer was only a life grant, it was resumable at pleasure.

In the rejoinder, it is urged that the statute of limitations bars the suit, and that the fact of plaintiffs' dispossession is clearly proved by decrees.

The principal sudder ameen, on the 17th September 1844, recorded his judgment as follows: The plaintiffs have concealed the date of dispossession, though they indirectly allude to the period, by claiming wasilat, mesne profits, for 1246. They ground this action upon the second principal sudder ameen's proceeding of the 5th September 1843, but that will not avail them. They produce no proof of having had possession before 1245-46; none of the documents filed by them prove this. The entry of plaintiffs' names in the mutation register does not prove possession of the 250 beegahs now claimed, and their own assertions, without some documentary proof, are altogether insufficient for that purpose. The defendants urge the disputed lands are their malikana right, and that plaintiffs have never been in possession since 1789 A. D., and file sundry exhibits bearing dates from the last mentioned year to the present period; and the evidence they adduce proves that they and their ancestors have all along had possession of the lands as malikana. The plaintiffs ought, under the molovy's order of 1810, to have sued to establish their rights within twelve years from the date of that order, but they never did so. The provisions of Section 14, Regulation III. 1793, apply to this case. I dismiss the plaint with costs.

JUDGMENT.

The plaintiffs have produced no sufficient proof of possession before 1245, and have most carefully concealed the date of dispossession. They come into court under cover of an order of the 5th September 1843, passed by the principal sudder ameen in a case, in which they, the plaintiffs, had sued for balances of rent, but failed to establish their proprietory right to the land, the rents of which they claimed. The Court see no reason for interference with the decision of the principal sudder ameen, which they affirm, and dismiss the appeal with costs.

THE 15TH SEPTEMBER 1846.

PRESENT:

R. H. RATTRAY and
C. TUCKER,

JUDGES,

and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 164 OF 1843.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Patna, Syud Abdool Wahid Khan, March 23rd, 1843.

MUSST. FEZZEH KHANUM AND SYUD KHODABUNDEH KHAN, APPELLANTS, (DEFENDANTS,)

versus

TUSUDDUK HOSEIN KHAN, DECEASED, MUSST. OMUT UL FATEMA, WIDOW OF DITTO, AND MOTHER AND GUARDIAN OF ESUF HOSEIN, THE MINOR SON OF BOTH, RESPONDENTS, (PLAINTIFFS.)

Wukeel of Appellants—Gholam Sufdur.

Wukeels of Respondents—J. G. Waller and Ameen Ali.

THIS suit was instituted by respondents, on the 19th April 1841, to recover from appellants the *emambareh*, and lands attached to the same, of 'Muhulleh Dewan,' in the city of Patna, in virtue of a *wuseeyutnameh* (or will) executed by Colonel Kullub Ali Khan, bearing date 6th Rujub 1241 Hijree (1233 Fuslee) corresponding with the 14th February 1826. Estimated value, Sicca rupees 5000, or Company's rupees 5,333-5-4.

The plaint sets forth that Colonel Kullub Ali Khan, plaintiff's (Tusudduk Hosein's) father, in consequence of his (plaintiff's) minority, and in order to prevent future disputes, divided the real and personal property in his possession, by will, (with exception to the cash, trinkets, and raiment, already in possession of Musst. Husseena Khanum and Fezzeh Khanum, daughters by his first wife, and Syud Khodabundeh Khan, the husband of Fezzeh Khanum,) into sixty parts: of these, fourteen were bestowed upon plaintiff; seven, each, on Miriam-o-nissa, (plaintiff's sister,) Husseena Khanum, and Fezzeh Khanum; and five on his second wife, Janee Khanum, (plaintiff's mother); to all and each of whom a separate *hiba* (or deed of gift)

was presented by him. The remaining twenty parts he appropriated to charitable purposes; but of the proceeds of these twenty parts, he directed that rupees 470 should be devoted to lighting up the *kurbula* shrine, 390 to the benefit of his near relations, and 730 to the annual expenses of the *emambareh;* and in the will were the following instructions regarding the general superintendence, and concerning this *emambareh,* viz. 'that his son, Tusudduk Hosein, was, under all and any circumstances, to be the *mootuwullee* (or superintendent) of the *emambareh;* but, as he was then a minor, he (the testator) appointed Meer Khodabundeh Khan to discharge the duties, as *naib* (or deputy,) till Tusudduk Hosein should attain his full age: if any of the pensioners should demise, their pensions to devolve to Tusudduk Hosein.' Kullub Ali Khan is dead, and plaintiff has attained his majority; but defendant (Khodabundeh Khan) will not make over the *emambareh* to him: therefore, this suit is instituted.

In answer to this, appellants (defendants) observe, that they have only to refer to certain documents and official proceedings (as detailed) to refute the claim preferred. Amongst these is another will, bearing date the 9th Rubbee-ul-sanee, 1238 Hijree (1230 Fuslee) said to have been executed by Colonel Kullub Ali Khan, and to have been acknowledged by both the parties to the suit. It is upwards of fifteen years since Kullub Ali died (say appellants) and during this period disputes have prevailed and order upon order has been issued by the local courts, by the Sudder Adawlut, and by the Council, but in none of these is there any thing regarding the office of *mootuwullee,* as set forth by the plaintiff: on the contrary, the deeds referred to by plaintiff being considered as null and void, the bequeathed shares of the estate and the *emambareh,* with its furniture, remained in the possession of appellant and Husseena Khanum. The remainder of a very long and very laboured protest, is an exposition of facts and circumstances connected with the documents and proceedings above noted, and a denial of any right whatever on the part of respondents to what they lay claim to, in virtue of the evidence adduced by them.

The reply of respondents, is, that the will referred to by appellants, was never before produced, and consequently cannot have been verified by the courts; and more than this, being a forgery, it never will be exhibited. In the same way, the other documents alluded to, independently of being altogether inapplicable, are false, while the will filed by them (respondents), has been submitted in several cases; been proved genuine by witnesses; and admitted as such. If the appellants had such a will as they now put forth, why was it not brought forward when the dispute regarding the *emambareh* was before the magistrate? &c.

Of the rejoinder there is nothing to record.

The principal sudder ameen considered the will of 1233 Fuslee, exhibited by respondents, to be proved a good and valid instrument, by the evidence of the attesting and other witnesses; more particularly, by the testimony of Futtehoolah and Fuqueer Ali Khan, given in the case of some of the relations of the testator, pensioners under the will, while that of Sulamut Ali Khan, sudder ameen of Tirhoot, a witness on the part of appellants, of unquestionable credit, had stated, that both the wills were drawn out in Kullub Ali's lifetime, but that he did not, himself, attest the later one, produced by respondents; and further, Sheikh Buhadur Ali, a witness on behalf of appellants, had confirmed the fact of the execution of that later will: so that he deemed the execution of both the wills to be established. The *futwa* of the law officer had declared the last of the two wills to be entitled to the preference; and had determined that Janee Khanum had no competence to make any adjustment with the appellant Khodabundeh Khan, nor to delegate to him the superintendence of the *emambareh* (as asserted in appellant's answer); but the plaint having greatly overrated the value of the furniture, &c. of the *emambareh*, it was considered proper to decree, in addition to possession of the *emambareh*, so much of the appurtenance claimed, as the appellant had admitted to be in his possession. A decree was passed accordingly.

Against this, an appeal was preferred, on the ground, 1st, of the claim not being cognizable under Section 14, Regulation III. 1793, the statute of limitation applicable to the case, with reference to the period of the death of Kullub Ali Khan; 2ndly, of the genuineness of the deeds and documents filed by respondents, not having been established or enquired into; and 3rdly, of the *futwa* of the Patna court not being agreeable to the law, on the subject referred for elucidation.

On the first of these objections, the Court do not deem it necessary to do more than advert to the minority of the claimant, to within the period allowed by law for a prosecution of his claim; on the second, they observe, that there is no reasonable ground for doubting the will submitted by the claimant, being, what it purports to be, the genuine production of the deceased Kullub Ali Khan; and as regards the third, with all due consideration of and deference to the opinion of their law officer, as set forth in a *futwa* furnished by him on their requisition, viz. that the intention of the deceased testator, in respect to the appointment of a *mootuwullee*, is not conclusively manifest, they have no doubt whatever of the intention of the father having been in favor and preference of his son, the respondent.

The decree appealed from is accordingly confirmed; with all costs payable by appellants.

THE 15TH SEPTEMBER 1846.

PRESENT:

R. H. RATTRAY and
C. TUCKER,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 161 OF 1842.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Sarun, Fuzl-ul-Huq, September 16th 1840.

HYABUL SINGH AND OTHERS, HEIRS OF ACHUMBHIT RAEE, APPELLANTS, (DEFENDANTS,)

versus

MAHA RAJAH NOWUL KISHOOR SINGH, RESPONDENT, (PLAINTIFF.)

Wukeels of Appellants—Edward Colebrooke and Mirza Aman Ali.

Wukeel of Respondent—Gholam Sufdur.

THIS suit was instituted by respondent, on the 24th June 1839, to cancel a *mokurruree pottah* (or lease in perpetuity) of 50 beegahs, 1 beeswah of land, situated in mouza Kunhoulee, talook Pyghumburpore, pergunnah Bal, valued at rupees 5,345-8-3; with *wasilat* (or mesne profits) from 1228 to 1246 Fuslee.

The substance of the plaint is, that plaintiff's (respondent's) brother, Anund Kishoor Singh, brought an action for rupees 5,330-9, principal and interest, the same being the rents due from 1228 to 1238 F. on 133 beegahs of land, in mouzah Kunhoulee, purchased at auction sale by him in Cheyt 1228 F., (1821). The suit was against Achumbit and Gheena Raee: and, on the 17th March 1836, was dismissed by the zillah judge, whose judgment was affirmed by the Sudder Court on the 25th May 1837; the claimant being told that he must, in the first instance, sue to cancel the tenure under which the defendants held possession. This he now does; and states, that the defendants have explained the origin of their tenure as follows: viz. that 'the entire village of Kunhoulee belonged to their ancestors; but the *amil*, Wullait Hosein, appropriated the same, with exception to some hundred beegahs, left as *malikana* to himself; and the same with respect to the *talook* of Pyghumburpore. On Wullait Hosein's death, his son Pyghumbur Bukhsh

cancelled the *malikana* grant, but gave them a *mokururree* one of 50 beegahs, 1 beeswah, in mouzah Kunhoulee, and marked off the boundaries with the standard *luggee* (or measuring rod).' Now, it is clear that Wullait Hosein had no authority to grant a *mokurrurec*, and his son was not even amil, and the regulations authorise a sale purchaser to annul former engagements. The decree of the provincial court of Patna of the 18th May 1803, had reference to a dispute between Phekoo Raee and Pyghumber Bukhsh, and not to the validity of this grant.

Defendants (appellants) answer, that plaintiff is the sole purchaser of a 5 annas, 19 gundahs, (or ⅓rd) share of talook Pyghumburpore, the remaining ⅔rds being in the hands of others; that their lands lie in *both*; that they have held them *mokurruree* for 200 years; and from 1228 F., the year in which plaintiff's brother's purchase was made, to 1237 F., have paid rent according to their tenure, to plaintiff's *amlah*, and hold receipts for the same.

Plaintiff replies that, with exception to 28 rupees for 1228 F., his *amlah* never received any rent from defendants.

The principal sudder ameen, after quoting certain proceedings of the judge and other officers, goes on to say, that there is no necessity for any enquiry into the payments and receipts pleaded by defendants; that the *mokurrurec* tenure cannot be upheld; and defendants must pay rent according to the fixed rates of the pergunnah; but that no *wasilat* can be adjudged, inasmuch as balances have been already sued for.

In appeal, the Court find that this *mokurrurec* was acknowledged and respected in a decision passed by the Patna provincial court in 1803; that it remained unaffected in 1818, when the settlement of Pyghumburpore, pergunnah Bal, was made by Government; and that the lands were not brought to sale, and purchased by respondent, till 1821, three years *after* that settlement, consequently there is no right vested in the purchaser such as is now claimed, and has been upheld by the decree appealed from; and, accordingly, that decree is hereby reversed and set aside, with all costs payable by respondent.

THE 16TH SEPTEMBER 1846.

PRESENT:

R. H. RATTRAY and
C. TUCKER,
JUDGES,
and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 30 OF 1843.

Regular Appeal from a decree of the Principal Sudder Ameen of Sarun, Syud Imdad Ali, passed November 8th 1842.

MAHA RAJAH NOWUL KISHOOR SINGH, APPELLANT, (PLAINTIFF,)

versus

ACHUMBHIT RAEE, (DECEASED) HYABOOL RAEE AND OTHERS, HEIRS OF DITTO, RESPONDENTS, (DEFENDANTS.)

Wukeel of Appellant—Gholam Sufdur.

Wukeels of Respondents—Edward Colebrooke and Mirza Aman Ali.

THIS suit was instituted by appellant, on the 28th June 1839, to obtain possession of 67 beegahs, 19 beeswahs of land, in mouzah Kunhoulee, talook Pyghumburpore, pergunnah Bal; with (by a supplementary plaint) *wasilat* (or mesne profits) from 1228 to 1246 Fuslee; estimated, principal and interest, at Company's rupees 6,941-5.

The preceding case, No. 161 of 1842, was to cancel a *mokurruree pottah* held by defendants: this suit was brought to recover the proprietary possession, with power of assessment, of the quantity of land above set forth; the same being held in excess of the quantity to which, under their *pottah*, defendants are entitled.

The principal sudder ameen, having directed the measurement of the lands occupied by defendants, and compared the result with their pottah, determined that there was an excess in their lands of 35 beegahs and 10 beeswahs; which he accordingly decreed to plaintiff.

This appeal was brought by plaintiff, against the judgment, with the view of obtaining the portion disallowed in the lower court.

There is no occasion to enter upon the merits of the case, inasmuch, as the claim should not have been recognised as admissible in the zillah court. Appellant purchased his portion of the estate in 1821, or 1228 F.: this action for possession of the land asserted to be unwarrantably withheld by respondents, was brought in 1839, or 1246 F., eighteen years afterwards; being six years in excess of the period allowed by the statute of limitation. Appellant should have been nonsuited; and the decree passed in his favor, for 35 beegahs, 10 beeswahs of the land claimed by him, is cancelled accordingly. All costs to be paid by appellant.

THE 15TH SEPTEMBER 1846.

PRESENT:

C. TUCKER,

JUDGE.

PETITION NO. 275.

IN the matter of the petition of Mr. E. K. Hume, filed in this Court on the 9th June 1845, praying for the admission of a special appeal from the decision of Mr. Charles Mackay, principal sudder ameen of zillah Mymensingh, under date the 8th March 1845, reversing that of Syud Noorul Hossein, moonsiff of Nicklee, in the said zillah, under date 5th August 1844, in the case of Rada Govind Nundee and others, plaintiffs, *versus* Mr. E. K. Hume and others, defendants.

In this case the plaintiffs sued for possession of certain lands (of which they alleged they had been dispossessed by the defendants) on the strength of an *ousut talookdary pottah*, granted to them on 11th Bhadon 1237 B. S., by one Wanis Catchik, at a fixed and permanent annual *jumma* of twenty-seven rupees, and for which they paid a bonus of one hundred rupees.

The defendant, Mr. E. K. Hume, denied having dispossessed the plaintiffs, and contested the right of Wanis Catchik to grant such a lease to the plaintiffs. He stated that the said Wanis Catchik had, on the 15th Aughun 1235 B. S., made a conditional sale, *bye-bil-wuffa*, of the entire *talook*, of which the lands in dispute formed a portion, to his wife; that the deed was duly registered; that Wanis Catchik, not being able to repay the amount advanced at the due date, he on a further consideration made an out and out sale of the *talook* to his (defendant's) wife, on 16th Aughun 1237 B. S., for the sum of sixteen thousand, two hundred rupees, and put her in posses-

sion: she, dying, was succeeded by the defendant, E. K. Hume. A copy of the deed of conditional sale, granted by the register of deeds, was filed by the defendant, and also the original deed of sale, dated 16th Aughun 1237, who urged that the property having been mortgaged to his late wife prior to the date of lease exhibited by the plaintiff, which mortgage was never cleared off, but resulted in an out and out sale to his late wife of all Wanis Catchik's right and title in the said lands, he the said Wanis Catchik had no legal right to grant such a lease, to the injury of him, the defendant.

The moonsiff dismissed the plaint, but, on appeal, the principal sudder ameen reversed that officer's decision, on the grounds that Wanis Catchik was in possession of the property when he granted the lease to the plaintiffs, and that the defendant had not proved that his mortgage on the land was in force at the date of the plaintiff's lease.

I consider that this case cannot be satisfactorily adjudicated, unless Wanis Catchik be made a party to the suit. Having therefore, admitted the special appeal, I direct that the proceedings be returned; that the case be restored to the moonsiff's file in its original number; and that a supplementary plaint be taken from the plaintiff to bring in Wanis Catchik as a defendant; and the case be decided *de novo* on its merits.

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For Afzut-o-nissa, *read* Afzul-o-nissa.

THE 27TH OCTOBER 1846.

PRESENT:

A. DICK,

JUDGE.

CASE No. 302 OF 1844.

Regular Appeal from the decision of the Principal Sudder Ameen of Zillah Mymensingh, Mr. C. Mackay.

SHEIKH MOHUMUD MOLAIM AND OTHERS, APPELLANTS, (DEFENDANTS,)

versus

RAM GOPAL SURMA TURFDAR, RESPONDENT, (PLAINTIFF.)

Pleaders—Mohumud Huneef and Gholam Ahmud for Appellants, and Ubas Ullee and Mr Skinner for Respondent.

SUIT laid at Company's rupees 6070-13-8, on account of profits from a talook while under attachment.

The plaintiff purchased a share in the talook in question, got a decree, and was put formally into possession. The talook was however under attachment for arrears of rent; and the amount claimed accrued during that time on plaintiff's share, as net profit, after payment of revenue due on it, as alleged by plaintiff, and was appropriated by the collector to the realization of arrears due by the other sharers, the defendants. The defendants contended, that the amount of revenue due on plaintiff's share was larger than what he had stated, on the faith of what was inserted in his deed of purchase, as was apparent from the butwara papers of the collectorate; and so far from the profits due to him having been applied to the payment of their arrears, the contrary was the fact; and they had sued accordingly.

The principal sudder ameen decided the suit in the following words:

"The point to be tried in this case is, whether the plaintiff can be considered entitled to recover the amount which was in deposit in the collector's office as per collections made by the 'kroke-suzawul,' during the period that the mouzahs Hijjuleea, &c. were under attachment.

"From a perusal of all the papers in this case, and the papers of the 'kroke-suzawul,' it is clear that rupees 5024, 15 annas, 15 gundahs, was collected on account of plaintiff from the mouzahs Hijjuleea, &c. from which amount deducting rupees 270, 6 annas, 15 gundahs, being his own arrears of revenue for three

years, (at an annual jumma of rupees 90, 2 annas, 5 gundahs, as per kubbala of the mouzahs purchased by plaintiff,) would leave a balance of rupees 4491, 4 annas, 5 gundahs in his favor, after deduction of the expenses of collections, &c., as per separate paper in Bengalee marked A, to which sum I consider the plaintiff entitled; but as the same was subsequently taken by the collector for arrears due by the other shareholders, I am of opinion a decree against them alone should pass in favor of plaintiff, viz. Nowsheir Ully Khan, Rumzan Beebee, Mahomed Sha, Bhugban Chunder Doss, Mahomed Molaim, Muheeooddeen, Baharoollah (son of Cheekun Sheik, dead,) Sheik Gadoo, Sheik Saduk, Zumeer-ooddeen, Bholanath Fotedar, Bhyrub Chunder Surma, and Now Ruttun Beebee. The defendants not above named to be considered released from this claim, and their costs to be borne by the plaintiff.

"Order accordingly. A decree in favor of plaintiff, as above particularized."

In appeal much the same pleas were urged.

JUDGMENT.

The points to be ascertained were: 1st, Did the profits on plaintiff's share amount to the sum alleged? The principal sudder ameen has neglected to have filed copies of the documents on which he asserts it to be clear, that rupees 5024-15-15 gundas were collected on account of plaintiff's share; and not a particle of proof on the point is on the record. 2d, The amount of revenue payable on the plaintiff's share. The principal sudder ameen has assumed the amount alleged by plaintiff to be correct, because it so appears in his deed of purchase. That might be good evidence against the former proprietor, the seller, but cannot affect the interests of the other sharers in the talook. 3d, Was the collector justified in appropriating the profits to the payment of the arrears of the other shareholders? The principal sudder ameen has exonerated him, but has neglected to record any reason for so doing. 4th, Were the profits appropriated to the payment of arrears of all the defendants, or of some only, and to what amount on account of each respectively? The principal sudder ameen has decreed against some only, and without specifying the amount due by them severally; and he has released others, without recording any reason for so deciding.

The case is therefore remanded. The principal sudder ameen will require evidence from plaintiff on each of the points above indicated; and after allowing the defendants to file proofs in refutation, decide. The principal sudder ameen will be careful in future to have copies of all documents he may consult from other cases, or offices, or courts, filed in the case decided; and will record his reasons on every point he decides. His attention is further directed to Construction 375, dated 4th February 1825, and Section 3,

Regulation II. 1806. The defendants in this case were allowed to file their answers months and, some, years after the prescribed period had elapsed, without any satisfactory reason for the default. Now that plaintiffs are subject to the heavy penalty of nonsuit for the least default, they have a right to expect that the defendants shall not be allowed to do as they please.

THE 27TH OCTOBER 1846,

PRESENT:

A. DICK,

JUDGE.

CASE No. 303 OF 1844.

Regular Appeal from the decision of the Principal Sudder Ameen of Zillah Mymensingh, Mr. C. Mackay.

SEIUD MOHUMUD SHAH, APPELLANT, (DEFENDANT,)

versus

RAM GOPAL SURMA TURFDAR, RESPONDENT, (PLAINTIFF,)

RAEE CHÂND CHOWDREE, THIRD PARTY.

Pleaders—Pursun Koomar for Appellant; Ubas Alee and Mr. Skinner for Respondents; and Mr. Waller for the Third party.

SUIT laid at rupees 4,898-5-3.

This case is an appeal from the same decision, and the same judgment passed on it.

THE 31ST OCTOBER 1846.

PRESENT:

J. F. M. REID,

JUDGE.

PETITION No. 285 OF 1845.

IN the matter of the petition of Ram Nath Dhur, Ram Kunth Dhur, and Nund Doolal Dhur, petitioners, filed in this Court on the 13th June 1845, praying for the admission of a special appeal from the decision of Mr. C. Mackay, principal sudder ameen of Mymensingh, under date the 14th March 1845, reversing that of Syud Noor Ool Hosyn, moonsiff of Niklee, under date 22d May 1844, in the case of petitioners, plaintiffs, *versus* Bugwan Chunder Gungolee, defendant.

A summary award having been passed by the collector of Mymensingh at the suit of the koork serberakar, or managing

receiver, of the attached mehal, 8 annas of talook Newaz Ali, pergunnah Runbhowal, against the petitioners, as proprietors of kismut Oosnee, &c., attached to the said talook, the petitioners sued to set it aside and recover 38 rupees, 10 annas, 2 pie, levied on them in execution. They pleaded that the kismut in question descended by inheritance to their father, Byjnath Dhur, who made it over by deed of gift on 23d Bysakh 1245 to Sheeb Nath Dhur, son of Ram Nath Dhur, Radha Kunth Dhur, son of Ram Kunth Dhur, and Sooruj Munee, wife of Nund Doolal Dhur. The moonsiff, deeming it proved that the said donees were actually in possession of the kismut, decreed that the managing receiver should have sued them and not the petitioners, and reversed the collector's award.

The principal sudder ameen reversed the moonsiff's decision on the ground that the collector's award had been given strictly in conformity to established practice, and was open to no impeachment.

The principal sudder ameen ought to have sifted the collector's award, and decided whether it was borne out by the merits of the case as between the parties. His decision is therefore annulled as incomplete. He will restore the appeal to the file and determine whether, under the circumstances of the case, the rent claimed is demandable from the petitioners. The value of the stampt paper, on which the petition of special appeal has been written, will be returned.

THE 2ND NOVEMBER 1846.

PRESENT:

R. H. RATTRAY and
C. TUCKER,
JUDGES, and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 76 OF 1845.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Tirhoot, Syud Ushruf Hosein, January 6th, 1845.

SURDHA SINGH, TALEWUR SINGH, AND BEENEE MADHO SINGH, APPELLANTS, (PLAINTIFFS,)

versus

BIRJ BEHAREE SINGH AND FOURTEEN OTHERS, RESPONDENTS, (DEFENDANTS.)

Wukeel of Appellants—Abbas Ali.

Wukeels of Respondents—E. Colebrooke, Rama Purshad Raee, Mohummud Muzhur, and Abdoollah.

THIS suit was instituted by appellants on the 10th of February 1836, to recover from respondents Sicca rupees 9,996-0-3, principal

and interest, due as *wasilât* (or mesne profits) from 1233 to 1240 Fuslee, on 248 B. 15 B. 6 D. of land, in mouzah Chuk Mohummud, pergunnah Hajeepore.

The substance of the plaint is, that on the 29th of August 1831, appellants Surdha Singh and Talewur Singh sued respondents for the lands on which *wasilat* is now claimed, and on the 7th of April 1832 got a decree for the same in the court of the principal sudder ameen, which decree, on the 22d of July 1833, was affirmed on appeal, by the judge. The plaint in that case stated, that appellants had been dispossessed by respondents in 1233 F. (1826,) being at the time proprietors of the three villages adjacent to their original zemindaree purchased by them in 1226 F. (1819). Their decree was not executed till 1241 F. (1824). Their present claim is for *wasilat* on the land at the rate of Sicca rupees 3-9 per *beegah* from 1233 to 1240 F. (1826 to 1833). In 1239 F. (1832) Talewur Singh sold half of the mouzah to Beenee Madho Singh: consequently, antecedently to that period the *wasilat* is due to Talewur, but after it to Beenee Madho.

The answer of respondents denies that they ever dispossessed appellants; and declares that the decision of the principal sudder ameen to the contrary was passed without any due enquiry into the fact; that the asserted sale by Talewur Singh to Beenee Madho Singh is false; that the *wasilat* claimed is excessive; and that a rupee or 8 annas is ample, a great portion of the land being sand, &c.

The principal sudder ameen acknowledges the justice of the claim for *wasilat* antecedently to the institution of the suit for the land in 1831, but disallows it with reference to paragraph 6 of the Circular Order of the 11th of January 1839: and decrees for 1239-40, and on to the date of possession, at 1 rupee per *beegah* on the whole land.

Now it has been ruled by the Court, by a decision passed on the 17th March 1845, that the Circular Order of the 11th January 1839 was not intended to operate retrospectively; and we accordingly amend the decision of the principal sudder ameen in the present case, and adjudge *wasilat* from 1233 F. the period of dispossession, to the date of the decree for the land, at the same rate as that adopted for what has been allowed and awarded for 1239-40, which rate has not been objected to by respondents.

Costs payable by respondents.

THE 2ND NOVEMBER 1846.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES, and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 115 OF 1845.

Special Appeal from a decision of the Principal Sudder Ameen of Behar, Hedayut Ali Khan, passed April 17th 1844; *affirming a decree passed by the Sudder Ameen, Mohummud Ibrahim Khan, November 22d,* 1842.

BECHOO OPADHIA AND CHINTAMUN OPADHIA, APPELLANTS (DEFENDANTS,)

versus

SHAH MOHUMMUDEE, MOOST. FATIMA, AND MOOST. HUSEENA, RESPONDENTS, (PLAINTIFFS.)

Wakeel of Appellants—Abbas Ali.
Wakeel of Respondents—J. G. Waller.

THIS suit was instituted by respondents on the 17th January 1842, to recover from appellants mouzah Nehalpore Gureek, lying in pergunnah Nirhut; with mesne profits, as set forth, on the same and on Syadpore Gureek.

Respondents had mortgaged to appellants the three villages of Manpore, Nehalpore Gureek, and Syadpore Gureek; Manpore and Syadpore Gureek had been given up by appellants; and this suit was instituted by respondents to recover possession of Nehalpore Gureek, with mesne profits on it and Syadpore Gureek, on the plea, that the mortgage had been paid off by the produce. They laid their suit for the land at three times the *sudder jumma* (or Government revenue) of the two villages; but appellants, in their answer, pleaded that, there not being any separate defined *jumma* on Nehalpore Gureek, they ought to have sued at the selling price. The sudder ameen overruled the objection, on the ground, that, respondents having laid their suit at thrice the jumma of both villages, it was correctly valued; and proceeded to try and decide the claim on its merits. The principal sudder ameen, without adverting specially to this point, affirmed the decision.

A doubt existing as to the correctness of the opinion recorded by the sudder ameen, the judge, before whom the case came, admitted the present special appeal, to determine the question. He was disposed to think, that the suit should have been laid at the selling price of the land; and if that exceeded the amount of the estimate adopted, in the proportion of 10 per cent., the defendants (appellants) were entitled to a nonsuit.

The Court observe, that the appellants who demurred to the valuation, made no appeal, summary or regular, on that particular point, as required by paragraph 3 of the Circular Order of August 20th, 1841. They therefore dismiss the appeal; with costs payable by appellants.

THE 2ND NOVEMBER 1846.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES, and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 171 OF 1844.

Special Appeal from a decision passed by G. Gough, Judge of Sarun, July 21st, 1843; affirming a decree passed by the Sudder Ameen, Leela Dhur Pundit, April 22d, 1843.

SHEO SAHOO, APPELLANT, (DEFENDANT,)

versus

MOSST. GOONDOORA, RESPONDENT, (PLAINTIFF.)

Wukeel of Appellant—A. A. Sevestre.

Wukeel of Respondent—None.

THIS suit was instituted by respondent on the 13th July 1840, to recover from appellant four cubits of land valued at rupees 32, and to obtain the demolition of a wall built upon the same by the latter.

The land was held under a mokurruree pottah (or permanent lease) by respondent's father; and her right to it being proved to the satisfaction of the lower courts, a decree was passed and affirmed in her favor, on the dates above noted.

But respondent admits that her mother, the widow of the mokurrureedar, is still alive, and has not pleaded any special grounds upon which her right to the land should supersede that of her mother; and as, under the Hindoo law, the widow of a deceased holder of land inherits before the daughter, the claim of the latter in this case should not have been admitted, and she (the respondent) should have been nonsuited. Ordered accordingly; the decrees of the lower courts being reversed, with all costs chargeable to respondent.

THE 3RD NOVEMBER 1846.

PRESENT:

C. TUCKER,

JUDGE.

PETITION NO. 289 OF 1845.

IN the matter of the petition of Theodore Lucas, filed in this Court on the 13th June 1845, praying for the admission of a special appeal from the decision of Mr. Henry Swetenham, judge of Dacca, under date the 14th March 1845, affirming that of Mr. James Reily, principal sudder ameen of Dacca, under date 11th May 1843, in the case of Theodore Lucas and others, plaintiffs, *versus* Mrs. Theodosia Nicolas Elias and others, defendants.

A lady attached to the Greek church at Dacca died in April 1842, and was buried, under instructions from her husband, father, and other relatives, in the verandah of the church, for which a charge of 1500 rupees was made; and the husband and relatives of the deceased refusing to pay this demand, the present suit was instituted to compel payment.

The deceased's father, Nicolas Elias, pleaded that the grave in which his daughter's remains had been deposited, was purchased by his father, Demetrius Elias, for 1500 rupees, and that he, Demetrius Elias, was buried therein, and that it was not consistent with the rules or practice of the Greek church to demand a second payment of 1500 rupees.

The plaintiff produced a copy of "draft rules and regulations for the Greek churches of Calcutta and Dacca, dated 10th June 1837," under articles 8 and 9 of which he rested his claim, in behalf of the church over which he presides, to receive 1500 rupees for every body buried in the verandah of the church.

This copy appears to have been made from the church register on the 29th September 1842, and, amongst others, bears the signatures C. D. Elias and D. N. Elias, but whether these represent the identical Demetrius Elias and Nicolas Elias above mentioned

is not stated. But the principal sudder ameen, Mr. James Reily, would appear to have taken the date on which the copy was granted for that on which the rules had been approved and accepted by the members of the Greek church at Dacca, and hence he considered them inapplicable, and finally dismissed the case. The judge, in appeal, affirmed Mr. Reily's decision.

This point, however, seems very doubtful, and requires to be cleared up. The case is therefore remanded; and the judge will institute enquiries and take evidence, if necessary, to ascertain whether the date "29th September 1842," at the foot of the draft rules, indicates the date on which the rules were approved and accepted by the members of the Greek church at Dacca, or merely that on which the copy was extracted from the church books at Calcutta. Should the latter prove to be the case, the judge will reconsider his judgment, and, with reference to articles 8 and 9 of the said rules, pass such orders as he may deem right and proper.

THE 4TH NOVEMBER 1846.

PRESENT:

A. DICK,

JUDGE.

CASE No. 229 OF 1844.

Regular Appeal from the decision of Chunder Seekur Choudree, Principal Sudder Ameen of Zillah Backergunge.

NUNDKOOMAR RAEE AND KALEE PURSHAD DAS, APPELLANTS, (DEFENDANTS,)

versus

GOUR CHUNDUR GHOSE AND OTHERS, *Paupers*, RESPONDENTS, (PLAINTIFFS.)

Pleaders—Tarik Chundur Raee for Appellants, and Rama Purshad Raee and Mr. Waller for Respondents.

SUIT laid at Company's rupees 9199-5-4, to cancel auction sale in execution of decrees of court.

The plaintiffs instituted this suit after the lapse of 9½ years from the date of sale, on divers pleas, of which the two principal were, that the sale was made for rupees 773-10-2 by the collector, although the order of the court directed it for the sum of only 423-10-2; and second, that the proclamations of notice were issued, neither at their dwellings, nor on the property advertised, nor at the police thanah within which it was situated.

The defendants contended that the sale was perfectly regular, and that, though at first ordered in execution of two decrees only, a third was subsequently added, which caused the amount for which the property was sold to be 723-10-2.

The principal sudder ameen, after in vain calling for the record of proceedings held on the sale, decided on two documents, lotbundees; one a statement advertising the property for sale, filed by plaintiffs; and the other, a statement of the actual sale, filed by defendants. Finding the former to state that the sale was to be for 423-10-2, and the latter that it was effected for 723-10-2, he declared the sale to be illegal and decreed the claim. On the second plea, he entered into no investigation.

JUDGMENT.

The evidence on which the decision has been given, is by no means conclusive or satisfactory: nor has any good reason been given by the revenue authorities for the non-production of the record of proceedings of the sale: and sufficient inquiry or search has not been made in the record office of the civil courts regarding the orders issued thence to the collector on account of the sale. The principal document, that filed by plaintiff, shews on the face of it an egregious error, not detected by the principal sudder ameen. In it is stated, that the sale had been ordered in execution of two decrees: one for rupees 344-7-10-2 and the other for rupees 98-9; these are summed up as rupees 423-0-10-2. The sum total tallies with another statement, filed by plaintiff, said to have been sent with the roobukaree, or order for sale, and which is not forthcoming; but the two amounts of decrees sum up rupees 443-0-10-2, and thus the statement sent with the order, or roobukaree, was at variance with it.

Ordered, that the case be remanded for the judge to place on his own file, and to use his best endeavours to obtain the original record of proceedings of the sale from the revenue authorities, or, if not forthcoming, to see that the parties to blame be duly called to account. He will also call upon the plaintiff to prove his second plea, that the notice of sale was not duly issued; and then decide after a full consideration of the case.

The principal sudder ameen permitted the defendants to file a durkhast, or petition, by way of answer, after, as therein asserted, that an order for *exparte* trial had been given, though nothing of the kind is on record; and consequently long after the lapse of the prescribed period for filing an answer; and without any good or sufficient reason for the default, as required by law.

This irregularity the judge will duly bring to the notice of the principal sudder ameen for his future guidance.

THE 5TH NOVEMBER 1846.

PRESENT:

J. F. M. REID and
A. DICK,
JUDGES, and
W. B. JACKSON,
OFFICIATING TEMPORARY JUDGE.

CASE No. 32 OF 1843.

A Regular Appeal from the decision of the Additional Principal Sudder Ameen of the 24-Pergunnahs, Hurchunder Ghose.

RAM LOCHUN RAEE, APPELLANT,

versus

RAMUNEE MOHUN GHOSE, RESPONDENT, (DEFAULTING.)

Pleader, Sheeoonarian Chutoorjeeah for Appellants.

THE respondent sued the appellant and one Puncha Nund his elder brother, to recover his share of a paternal estate, sold by his brother, Puncha Nund, to the appellant, while acting as his guardian, during his minority.

The brother did not appear and answer to the suit. The appellant appeared, and contended that the brother, as guardian of respondent, who was a minor, mortgaged, together with other shareholders, his own share and the respondent's to him, for the express purpose of paying up arrears of revenue on account of which the property was about being sold at public auction; and he filed a deed of conveyance and a judgment bond, to prove this. The estate was afterwards collusively brought to sale for arrears of Government revenue, to defraud the appellant, and, by his exertions, the Government sale cancelled, and the estate sold by the sheriff of the Supreme Court to satisfy the judgment bond held by appellant, and was purchased by him. It was again sold for arrears of Government revenue, and a surplus of the proceeds remained in the collector's hands, and was attached by the respondent.

The additional principal sudder ameen, deeming the sale of the respondent's share by his guardian during his minority illegal, declared it null and void; but as the property had been sold for arrears of Government revenue, respondent could not have posses-

sion given; he accordingly ordered him to receive a rateable portion of the proceeds with interest, amounting to rupees 451-6-12-2, and mesne profits from appellant during the time he held possession.

From that decision the appellant instituted this appeal.

JUDGMENT.

The Court are of opinion that as the mortgage of the minor's share, by his legal guardian, was a *bonâ fide* transaction and entered into for the benefit of the property, and no suspicion of fraud apparent, the transaction was perfectly legal and valid, and must be upheld. They therefore reverse the judgment of the additional principal sudder ameen, dismiss the claim, and decree the appeal with full costs.

THE 5TH NOVEMBER 1846.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES, and

W. B. JACKSON,

OFFICIATING TEMPORARY JUDGE.

CASE No. 60 OF 1843.

Regular appeal from the decision of the Judge of Hooghly.

PETUMBUREE DOSSEA AND DHUN MUNEE DOSSEA, (DEFENDANTS,) APPELLANTS,

versus

CHUKOO RAM SINGH (PLAINTIFF) AND PUDUM KUWUL DOSSEA, (DEFENDANT,) RESPONDENTS.

Pleaders—Neel Munee Banerjee for the appellant; Bunsee Budun and Ram Pran Rai for Chukoo Ram Singh, and Nusseemoodeen for Pudum Kuwul Dossea.

THE plaintiff instituted this suit in zillah Hooghly to recover 1582-11-0-0, the rent of a putnee talook, named Poolhunda, &c., from Kalee Dass Dutt, minor son of Sham Chand Dutt, to whom the talook was originally granted. The guardians of the minor defended the case, but the minor dying, was represented by Petumburee, his mother, and Dhun Munee Dossea, his step-mother, the widows of Sham Chand Dutt. A decree was passed in favor of the

plaintiff by the sudder ameen on the 20th May 1837, which was confirmed by Mr. Barlow, the judge, on the 1st June 1839. A special appeal having been admitted by this Court, the Court (Mr. Tucker concurring with Mr. Dick) observed that it appeared that the talook in question had fallen, on a partition of the family property, to Juggut Chund Dutt, brother's son of Sham Chand Dutt; and that his widow, Pudum Kuwul Dossea, was in possession. They therefore, on 5th March 1842, sent back the case to the zillah judge with instructions to include Pudum Kuwul Dossea among the defendants, and, if her possession should be proved, to decree the arrears due against her, and, in the event of her not paying, against the appellants, Petumburee Dossea and Dhun Munee Dossea, who, by failing to have their names erased from the zemindar's records, had rendered themselves liable for the rent.

The usual notice and proclamation appear from the judge's return to have been issued against Pudum Kuwul Dossea, but she did not appear to defend the suit. The judge, Mr. G. C. Cheap, deeming her possession proved, on the 24th September 1842 decreed the sum claimed against her, Petumburee Dossea, and Dhun Munee Dossea conjointly.

A further appeal to this Court having been admitted, the case was heard on the 18th February 1846, when the Court (present Messrs. Reid, Dick, and Jackson) being of opinion the decision could not be altered so as to make Pudum Kuwul Dossea solely liable in the first instance, unless she were summoned to appear as a respondent, allowed the appellants by a supplementary plaint to make that person a respondent. The due notice appears from the return of the judge of Hooghly, dated 24th April 1846, to have been issued, calling on her to appear. She did not appear till long after the prescribed period, when she filed an answer. As however she was unable to give any sufficient reason for not having appeared in the first instance before the zillah judge to defend the case, nor again in this Court, within due time, she cannot now be heard.

As the evidence filed by the appellants clearly evinced the possession by the husband of Pudum Kuwul Dossea and herself of the putnee talook in question, the Court must hold her responsible in the first instance. They deem the appellants also responsible in as much as they have not resorted to the easy remedy provided by Section 5, Regulation VIII. 1819, of relieving themselves by compelling the zemindar to record the transfer and erase their names. The Court, therefore, alter the decision of the zillah judge, and decree the arrears claimed, with costs, in the first instance against Pudum Kuwul Dossea, and, in the event of her failing to pay, against the appellants.

THE 5TH NOVEMBER 1846.

PRESENT:

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 116 OF 1844.

Special Appeal from the decision of the 2nd Principal Sudder Ameen of Jessore, dated the 3d April, 1843.

SARTEE BEWAH, (PLAINTIFF,) APPELLANT,

versus

SUMBHOO CHUNDER GHOSE AND OTHERS, (DEFENDANTS,) RESPONDENTS.

A SPECIAL appeal was admitted by Mr. Tucker, on the 28th November 1843, on application of the plaintiff against the decision of the 2nd principal sudder ameen of Jessore, dated the 3rd April 1843, reversing that of the moonsiff of Singheea of the 6th of September 1842, on the ground that the pottah of a mofussil gomashta unconfirmed by his principal had been recognized as valid and sufficient to oust an under-tenant.

The plaintiff stated that her husband Toolseenath had a fixed jumma of 10 rupees 14 annas, in the village of Wadeepore, and that the defendants in collusion with the zemindar ousted her in 1243. The defendants pleaded that the said Toolseenath in 1242 sold the above jumma to them for 15 rupees and went elsewhere; that they have ever since been in possession and regularly paid their rents,—receipts for which they produce.

The moonsiff decreed for the plaintiff, on which the defendants appealed to the principal sudder ameen, who, being of opinion that the deed of sale was fully proved by subscribing witnesses to the number of five, and that it was further established by the pottah given by the gomashtah to the defendants, and by his receipts for rents, reversed the moonsiff's decision and decreed for the appellants in his court.

The ground on which the special appeal has been admitted is not to the point; the decision hinges entirely on the sale or otherwise of the jumma by the plaintiff's husband, deceased, to the defendants.

The principal sudder ameen decided that the sale actually took place, and this was the only point for consideration, so far as the plaintiff was concerned: the jumma having gone into other hands by consent of her husband, the question whether the pottah was, or was not, confirmed by the zemindar, was foreign to the merits of the case *quoad* her rights.

It is quite clear that the decision of the 2nd principal sudder ameen was passed on very sufficient grounds. I therefore affirm it. Costs charged to the appellant.

THE 7TH NOVEMBER 1846.
PRESENT:
J. F. M. REID,
JUDGE.

PETITION NO. 295 OF 1845.

IN the matter of the petition of Kupeel Doss and Bishen Nath Doss, petitioners, filed in this Court on the 17th June 1845, praying for the admission of a special appeal from the decision of Captain J. Hannyngton, deputy commissioner under Regulation XII. 1833, under date the 17th March 1845, confirming that of Captain R. Onseley, officiating principal assistant of Lohurdugga, under date 22d March 1843, in the case of Bareek Deo Pershad Singh (plaintiff) *versus* the petitioners and Choonee Doss (defendants.)

It is hereby certified that the case was returned for re-trial on the following grounds.

The plaintiff sued to recover possession of Choogloo Perg Punaree on the plea that a mortgage thereof, executed in favor of the defendants, by his ancestor, had been paid off from the profits, and to recover the excess of collections beyond the amount due on the mortgage. The defendants pleaded that they had received a grant of the village on a mocurruree, or fixed rent, and could not be dispossessed. The acting principal assistant, being of opinion that the plaintiff had fully proved that the village was mortgaged to the defendants, decreed that the plaintiff should regain possession thereof, but that he could not get the excess of collections without further enquiry, to make which he appointed two persons as a punchayet.

The deputy commissioner confirmed this decision.

The Court consider the enquiry into this case to be incomplete. Supposing the mortgage to be fully proved and the plea of the defendant to be untenable, (and the Court see no reason to interfere with the finding of the assistant on these points,) it is an established rule a mortgager has no right to recover possession of mortgaged property, unless he deposit the amount lent, or prove that it and the interest thereon have been realized from the usufruct; and without enquiry it cannot be ascertained whether the mortgage has been paid off or not. This has not been done in this case. It is therefore ordered that the decisions of the lower courts be set aside as incomplete, and that the case be restored to the file of the principal assistant, with instructions to call on the plaintiff to prove the liquid-

ation of the mortgage and the existence of an excess in the hands of the defendants. Should the mortgage be proved to have been satisfied, the plaintiff will be entitled to possession and the excess of collections. Should the amount received by the defendants fall short of the amount of the mortgage money and interest, the plaintiff will not be entitled to possession till he has satisfied the demand against him. The value of the stamps on which the petitions of appeal and special appeal are written, will be returned as usual to the appellants.

THE 7TH NOVEMBER 1846.

PRESENT:

R. H. RATTRAY,
JUDGE.

CASE No. 354 OF 1845.

Regular Appeal from a decree passed by the 1st Principal Sudder Ameen of Tirhoot, Niamut Ali Khan, July 15th, 1845.

MOHUNT MUHADEO GEER, MOHUNT HEERA DAS, PURMANUND DAS, AND ISREE DUTT DAS, APPELLANTS, (DEFENDANTS,)

versus

MOHUNT RAJ BULLUBH GEER, RESPONDENT, (PLAINTIFF.)

Appellants' Wukeels—Ameer Ali and Gholam Sufder.
Respondent's Wukeels—Mr. Waller, Baboo Pursun Komar Thakur, and Abbas Ali.

THIS suit was instituted by respondent on the 25th of June 1844, to recover from appellants possession of mouzahs Muthoor and others, and other property, real and personal, belonging to the *mut'h* (or Hindoo temple) of Hurlakhee; with mesne profits for 1251 Fuslee: estimated at Company's rupees 14,350-0-7-4.

Respondent is the *mohunt* (or religious superior) of the *mut'h* of Kuplesur, in Nipal, situated just beyond the Tirhoot frontier; immediately within which is Hurlakhee, of the *mut'h* of which he (respondent) also claims to be the head, asserting it to be a dependency of the former. The lands claimed, were held by the appellant Muhadeo Geer, as resident *mohunt* in charge of the Hurlakhee establishment, and were sold by him to Purmanund Das and Isree Dutt Das: Heera Das is the brother of Purmanund, and was made a defendant in the case as aiding in withholding possession of the property. The question to be determined, is, whether Muhadeo was the independent proprietor, and competent to alienate what he sold; or respondent, as lord paramount, possesses the rights he sues to establish.

It appears, that the two *mut'hs* of Kuplesur and Hurlakhee were originally founded, upon their present footing, by Hurjeet Geer, some five generations antecedently to the incumbency of respondent, who succeeded in due course; and there is no doubt of the Kuplesur *mohunt* having always been considered and respected as the common superior, though there was an understood right of local succession with the *mohunts* of Hurlakhee, and an independence of management in regard to the affairs of that establishment, unshackled by any control or right of interference on the part of the superior. In proof of the connexion subsisting up to the present time, it is in evidence that the tomb of the last *mohunt* of Hurlakhee, Nurotum Geer, the immediate predecessor of Muhadeo, is not at Hurlakhee, but at Kuplesur.

Latterly, the affairs of the Hurlakhee establishment had become deranged; and at the time the cause of the present action arose, every thing was at a stand; and it had become necessary, if funds were not otherwise speedily supplied, to alienate a portion of the *mut'h* property, already mortgaged, to satisfy the claims against it. Under these circumstances, respondent entered into an arrangement with the appellant Muhadeo Geer, to advance the funds required, on an acknowledgment by the latter of the facts of the occasion, and an entire resignation of the property now contested, which it no longer was necessary to alienate. An *ikrarnameh* (or deed of acknowledgment) to the effect, was executed by Muhadeo, with a *mokhtarnameh* (or power of attorney) to facilitate the registry of it, which registry was duly made.

Muhadeo denies the execution of the *ikrarnameh*, and asserts the *mokhtarnameh* to have been prepared and signed in his presence, by Paruth Geer, the brother of respondent; referring to an intimation to this effect made by him (Muhadeo) to the jemadar of the Hurlakhee police chokee. There is nothing but this to support the assertion, and no opposition was made to the registry; and it is clearly and satisfactorily shewn, that the *ikrarnameh*, denied, was written in the public cutchery, in presence of a promiscuous assembly of persons, many of whom attested it at the requisition of Muhadeo himself, or were witnesses to his voluntary execution of it.

The principal sudder ameen, deeming the claim of respondent to be established, passed the decree appealed from; which the Court, concurring, affirm, with all costs chargeable to appellants.

THE 9TH NOVEMBER 1846.

PRESENT:

R. H. RATTRAY and
C. TUCKER,
JUDGES, and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 71 OF 1845.

Regular Appeal from a decision passed by the 2d Principal Sudder Ameen of Tirhoot, Syud Ushruf Hosein, January 7th, 1845.

OMA DIAL SINGH, DECEASED, RAM CHURN SINGH AND CHUNDEE PURSHAD SINGH, HEIRS OF DECEASED, APPELLANTS, (PLAINTIFFS,)

versus

MUSST. TEJ RANEE, WIDOW OF BURMHA DUTT, DECEASED, AND OTHERS, RESPONDENTS, (DEFENDANTS.)

Wukeels of Appellants—Baboo Pursun Komar Thakur, J. G. Waller, and Gholam Sufdur.

Wukeels of Respondents—Ameer Ali, C. Glass, and Taruk Chunder Raee.

THIS suit was instituted by appellants on the 16th of March 1842, to recover from respondents possession of talook Purhura Than Singh and other lands, situated in Tirhoot and Bhagulpore; estimated at Company's Rupees 22,267-13-2.

As much of the particulars of this case as, with reference to the nature of the final disposal of it, it is necessary to exhibit, will be found in the plaint; the substance of which is as follows:

'That, the original plaintiff, Oma Dial Singh, was adopted by Burmha Dutt in 1229 Fuslee; that, in virtue of this adoption, he was put in possession of the lands claimed in the lifetime of Burmha Dutt, and held them after his death with the approval of his widow Tej Ranee; that, in collusion with her brothers, the other defendants in the case, she (Tej Ranee) got her own name registered as proprietor, but this did not interfere with his (plaintiff's) occupancy; that, subsequently, with the view of more readily ousting him, she gave a lease of certain of the villages to a Mr. David Brown, in consequence of which disputes for possession arose, which were decided in the magistrate's court in Mr. Brown's and the widow's favor; that the decision against him (plaintiff) was passed on the 4th of October 1826, but he appealed to the commissioner of circuit, who,

on the 17th of April 1830, affirmed the magistrate's decision; that, since this, he has held possession of some of the villages, and the period of limitation not having elapsed since 1830, the year of the commissioner's order, he now sues, as instructed by the magistrate.'

The defendants denied the adoption, and pleaded the statute of limitation.

The principal sudder ameen was of opinion that, under the statute of limitation, the suit could not be tried; the cause of action having arisen in 1826, when the order of the magistrate declared possession to be with others, which order was *affirmed* in 1830.

The Court, concurring in opinion, in regard to the lapse of the prescribed period within which the action should have been brought, dismiss the appeal, with all costs payable by appellants.

THE 10TH NOVEMBER 1846.

PRESENT:

J. F. M. REID,

JUDGE.

CASE No. 219 OF 1846.

An application for the admission of a pauper appeal from the decision of Mr. E. Dacosta, Principal Sudder Ameen of Patna.

GUNGA PERSHAD, (PLAINTIFF,) PETITIONER,

versus

HUR CHURN SOOKUL AND OTHERS, (DEFENDANTS.)

THIS case was formerly before the Court in appeal, when Mr. Rattray, on the 4th March 1846, (see English Decisions of the Sudder Dewanny Adawlut for 1846, page 86,) remanded the case for further enquiry as to the plea of the petitioner and his brother Govind Pershad, that they were minors at the time the bond was executed on their behalf by Beenee Sing and Byjnath Singh.

The case came again before Mr. Dacosta on the 30th June 1846. He observed, that it was quite evident, that, on the 25th February 1836, when the suit, grounded on the said bond, was decided, Gunga Pershad was of age; for it appears from a copy of the reply of the petitioner and Govind Pershad plaintiffs *v.* Raja Bhoop Sing, defendant, that they therein asserted that Gunga Pershad was senior to Govind Pershad by two years, and that Govind Pershad, in a deposition given by him on the 29th January 1846, declared that he himself was 27 years of age, so that he must have been 17 years and Gunga Pershad 19 years old when the decree was passed in

February 1836. As, therefore, the decision of the 25th February 1836 had become final and conclusive, from no appeal having been preferred from it, nor a review of it applied for by the adult petitioner, he again dismissed his claim, and declared Govind Pershad to be released from responsibility.

I do not consider this enquiry of the principal sudder ameen sufficient. The point at issue is, whether the plaintiffs were, or were not, of age when the bond executed on their behalf was written, and this point has not been sufficiently enquired into. I therefore again annul the decision of the principal sudder ameen, and direct that the case be replaced on the file, and that the principal sudder ameen receive and examine such evidence, oral or documentary, as the plaintiffs may adduce to prove their minority at the time of the execution of the bond, as well as what the defendants may bring forward to rebut that plea.

THE 12TH NOVEMBER 1846.

PRESENT:

J. F. M. REID,

JUDGE, and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 179 OF 1841.

A Special Appeal from the decision of the Judge of Moorshedabad.

MOOST. USHRUFOONISSA, GHOLAM MOOKHTUDEH, AND GHOLAM MOOHTUDEH, (APPELLANTS,)

versus

MOOST. NOOROONISSA BEGUM, (RESPONDENT.)

Pleaders—Lootfoor Ruhman, for appellants; and Mahomed Huneef, for respondent.

THE respondent instituted this suit to recover from the appellants and Goolistan Khanum, Khyratee, Mirza Jan, Moost. Bunnoo, and Moonshee Nad Ali, a house in Jafiergunge in Moorshedabad, an orchard, or bagheecha, in Goaltolee, and about two biggahs of rent-free land in Hureegunge, under the following circumstances: Ushrufoonissa, owing to Moonshee Nad Ali 1,000 rupees, which she could not pay, executed an *ikrarnameh*, or deed, on the 19th July 1832, by which she made over to him the property in question; or, if he

preferred it, he was to receive the 1,000 rupees from the plaintiff, who was then to take the property. The plaintiff paid to Nad Ali 1,000 rupees, and was put in possession of the property, but being dispossessed by the defendants, sued them to recover possession with mesne profits, laying her action at 1,592 rupees.

Ushrufoonissa denied the whole transaction, and said that Syud Ufzul Ali, the plaintiff's son, had had access to her seal, and may have affixed it to the *ikrarnameh.* Gholam Mookhtudeh and Gholam Moohtudeh rested their defence on the answer of Ushrufoonissa. Moonshee Nad Ali supported the plaintiff's claim. The other defendants did not appear.

The principal sudder ameen, Sumbhoo Nath Rai, dismissed the claim of the plaintiff on the 21st July 1838. He did not consider the *ikrarnameh* proved, chiefly in consequence of the copy thereof, filed in court (for the original is not forthcoming) by the plaintiff, differing from another copy obtained from the office of the register of deeds, the seals of Gholam Hossein and Mirza Abdool Ruheem being affixed to the former as attesting witnesses and not to the latter. The judge, Mr. F. W. Russell, on appeal, reversed the decision of the principal sudder ameen. He considered the execution of the *ikrarnameh,* and the delivery of possession of the property to the plaintiff, after she had paid 1,000 rupees to Nad Ali, fully proved; and, on the precedent of the decision of the provincial court of Calcutta, in the case of Shufeikoolla and others, appellants, overruled the objection of the principal sudder ameen to the annexation of the signature of attesting witnesses after registry. He consequently, on the 23d November 1840, decreed that the plaintiff should be put in possession of the property in question, and receive mesne profits from Gholam Mookhtudeh and Gholam Moohtudeh, and that the whole of the costs should be charged to the defendants, (respondents of his court.)

A special appeal was admitted by Mr. D. C. Smyth, on the ground of the decision being at variance with that given in another suit between the parties, arising out of the same transaction.

The case was first taken up by Mr. Barlow, who, on the 10th November 1842, recorded his opinion for confirming the decision of the principal sudder ameen, and reversing that of the judge. He was of opinion that as the original deed (ikrarnameh) had not been filed in any court, and was not now forthcoming, the copy could not be acted upon; and that its execution had not been satisfactorily proved, as but one out of nine attesting witnesses had been examined, no sufficient reason for their absence having been adduced; and that the subsequent attestation by Gholam Hossein and Abdool Ruheem was a suspicious circumstance.

Mr. Reid then took up the case, and, on the 27th July 1843, recorded his opinion in entire accordance with that of Mr. Barlow; but having some suspicion, from the discrepancy between two

copies of the *ikrarnameh* filed in the case, that the deed was itself a fabrication, he postponed issuing the final order, until he could hold a sitting in the case with Mr. Barlow.

The judge was accordingly directed to make further enquiries as to the discrepancy between the two copies of the ikrarnameh, but the return shewed no data on which they could determine which copy was the correct one. The Court, being hopeless of acquiring any satisfactory information on the subject, deem any further enquiry unnecessary. As therefore the *ikrarnameh* or deed on which the plaintiff rests her claim is in their opinion not proved, they reject it, and, reversing the decision of the judge, they confirm that of the principal sudder ameen, and dismiss the claim of the plaintiff, with costs in all the courts.

THE 12TH NOVEMBER 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 273 OF 1845.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Shahabad, Munowur Ali, August 21st, 1845.

MUSST. RUSOOL BANDEE, APPELLANT, (PLAINTIFF,)

versus

GOVERNMENT, AND SURFRUZ KHAN AND FIFTY-FOUR OTHERS, RESPONDENTS, (DEFENDANTS).

Wakeel of Appellant—Luchmee Purshad.

Wukeels of Respondents—Bahoo Pursun Komar Thakur for Government, and J. G. Waller and Gholam Sufdur.

THIS suit was instituted by appellant on the 8th June 1844, to recover from respondents possession of talook Duhneej and other talooks, and certain houses, with mesne profits on the lands from 1248 to 1251 Fuslee, in virtue of a deed of by-mocasa (or transfer in lieu of dower) dated December 26th 1838; and reversal of the sales under which the said property has been lost to appellant: the whole estimated at Company's rupees 47,444-12.

This was a palpable attempt on the part of appellant, in collusion with the respondent Surfruz Khan, her husband, to defraud the creditors of the latter (respondents in the case) of the proceeds of lands, &c. sold, under decrees of court, in satisfaction of their claims respectively. Government became implicated, in consequence of the

collector having sold the property, and of a portion of the land having been brought to sale for arrears of revenue; but the object of the suit was as stated, on the part of both the individuals named.

Now, the deed upon which appellant founded her claim, and which assigned to her, her husband's estate, was dated at "Sahseram, December 26th 1838." By the usual endorsement, it was shewn, that the stamp-paper on which it was written, was purchased at Arrah, fifty miles distant, on that date.

The deed had not been registered, nor was the cazee's seal to it.

The application of appellant to the collector, to have her name recorded as proprietor, was made, by petition, on the 24th December, two days before the alleged transfer to her of the property.

No irregularity on the part of the collector is shewn to have attended the sales, and no appeal was made to the revenue authorities under Clause 2, Section 24, Regulation XI. 1822, nor to the civil court under Regulation VII. 1825.

The greater portion of the lands sold had been previously mortgaged; they had continued in possession of Surfraz Khan; they had never been claimed as hers, by appellant, when they were in jeopardy in the courts, under claims preferred by mortgagees and creditors; and when objections were urged by her husband against those claims, his pleas invariably had reference to his own proprietary rights, not those of his wife, appellant.

Upon these grounds, and others not necessary to mention here, the appeal from the decision passed by the principal sudder ameen on a corresponding view of the transaction, is affirmed; all costs being chargeable to appellant.

THE 17TH NOVEMBER 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE No. 8 OF 1846.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Shahabad, Munowur Ali Khan, August 6th, 1845.

MUSST. DHUNRAJ KOWUR (MOTHER AND GUARDIAN OF SAHOO SURN SINGH AND RAM SURN SINGH, MINOR SONS OF SHEO GHOLAM SING) AND DHUNPUT DAS, APPELLANTS, (PLAINTIFFS,)

versus

KOWUR SING, ROOP NURAIN SINGH, AND SALIGRAM SINGH, RESPONDENTS, (DEFENDANTS.)

Wukeel of Appellants—J. G. Waller.

Wukeels of Respondents—Ameer Ali and Gholam Ahmud.

This suit was instituted by appellants on the 1st of October 1844, to recover from respondents Company's rupees 12,800, principal and interest, amount advanced on a lease dated February 3rd 1831, of mouzah Umrpore Muroteca, in talooka Ramsaugur, pergunnah Arrah; the conditions of which lease were not fulfilled on the part of the lessor.

The decision appealed from is in substance as follows, and sufficiently explains the nature of the case: 'Baboo Kowur Singh, defendant, (respondent,) received from Bukhshee Bhugwunt Singh the sum of 6,000 Sicca rupees as advance on a ten years' lease of mouzah Umrpore Muroteca, viz. from 1239 to 1248 Fuslee. Bukhshee Bhugwunt sold this lease to Baboo Sheo Gholam Singh, husband of the plaintiff (appellant) Musst. Dhunraj Kowur, and Ajooba Chowdhree, husband of Musst. Deela, who (Deela) on becoming a widow sold his (her husband's) share to the plaintiff, Dhunput Das. Now, there is a decision of the zillah court, of the 12th of June 1834, from which it appears, that this same village of Umrpore Muroteca, with other lands, as set forth by plaintiffs, had been mortgaged by Kowur Singh, prior to the date of the lease to Bukhshee Bhugwunt, to Brij Bhookun Singh Sahoo; the mortgage to take effect from 1231 F. From a proceeding of the commissioner of circuit dated June 12th 1832, Bukhshee Bhugwunt is declared to be entitled to possession; but, by a decision of the civil court of June 12th 1834, Birj Bhookun's claim and prior right of occupancy were established and decreed, and as, before the grant of the lease pleaded by plaintiffs, Birj Bhookun's engagement had taken place, and was still in force, Kowur Singh had no competency to enter into a new engagement of the nature stated. From the evidence furnished by defendants and two of plaintiffs' witnesses, it is proved, that, after the lease had been signed and registered, Choonee Lal, gomashteh of Birj Bhookun, interfered on behalf of his master, and prevented the payment of the advance of 6,000 rupees to Kowur Singh, but that the deed (lease) remained with Bukhshee Bhugwunt, who was Kowur Singh's servant; the debts which this money was intended to liquidate being otherwise settled. The statement made by plaintiffs' witnesses, of 2,300 rupees having been paid before the registry of the deed, and the balance afterwards, is not admissible: they are not trustworthy, and their testimony is false upon the face of it. With reference to these facts and circumstances, the claim of plaintiff is dismissed.'

Appellants pleaded payment of the advance to Kowur Singh by Bukhshee Bhugwunt Singh, as proved by the acknowledged possession of the latter in 1832, and his having been dispossessed in 1834 by the decree in favor of Birj Bhookun: this, supported by the direct evidence to the payment, leaves no doubt of the fact, they say; and further than this, it was maintained and urged with much confidence, in appeal, that, allowing Kowur Singh to be ab-

solved from responsibility, that of the other respondents, the sons of Bukhshee Bhugwunt, still remained, with reference to the sale and purchase of the specific sum of 6,000 rupees involved in the transaction between the latter and those of whom appellants are the representatives: besides which, there was the admission of Musst. Deela, the widow of Ajooba Chowdhree, in support of the claim against them.

Now, it is in evidence, not only that Bukhshee Bhugwunt was the servant of Kowur Singh, but that he was the confidential manager of his (Kowur Singh's) affairs, had unlimited control in regard to them, and the keeping of all the papers, &c., connected with them: added to which, his signature as a witness is on the mortgage deed executed previously to and still in force, in favor of Birj Bhookun, at the time it is asserted he (Bukhshee Bhugwunt) paid 6,000 rupees, for a lease which he knew it was legally impossible he could hold. The possession recognised by the commissioner of circuit, was, I think, the result of a fraudulent collusion between Bukhshee Bhugwunt, and one Manik Ram, put forward as his under-tenant, and made to appear the occupant and his representative, through the means at his (Bukhshee Bhugwunt's) command, in the face of the utter illegality and improbability of such occupancy, as subsequently established in the civil court. The fact was, the commissioner, acting under Regulation XV. of 1824, had no competency to enter upon the question of *right;* and constructive *possession* was easily established with such engines in such hands, to uphold it. The crowning improbability, of 6,000 rupees having been jeopardised by Bukhshee Bhugwunt, in such a speculation as this, remains to be stated. At the date of his lease, the lands were under his own management, as the agent of Kowur Singh, who held them as *kutkinadar* (or sub-tenant) from Birj Bhookun; the proprietor from his own mortgagee, that is, which proprietor is, thus, made to bestow upon his own servant, for a consideration, the license to supersede a pre-existing and unfulfilled contract, and to dispossess another whose right of occupancy is virtually admitted by his own, as that other's lessee. It is only necessary to add, here, that the evidence is clearly against the assumption of any payment having been made to Kowur Singh, in this matter, and that, as respects him (Kowur Singh,) the claim fails.

But the responsibility of the other respondents, the sons of Bukhshee Bhugwunt, still remains, it is pleaded. Certainly not, I say. The purchase from Bukhshee Bhugwunt was clearly defined to be the 6,000 rupees due to him (Bukhshee Bhugwunt) as a refund, under the circumstances set forth, by Kowur Singh. If, then, nothing be due by Kowur Sing, the claim has evidently nothing to rest upon, and falls of itself; and as none is made for a return of the purchase money paid to Bukhshee Bhugwunt, nothing remains for

enquiry. The admission of Musst. Deela is merely that she disposed of her husband's rights and interests to Dhunput Das.

Deeming the decision appealed from to be just and proper, I affirm it; with costs payable by appellants.

THE 17TH NOVEMBER 1846.

PRESENT:

A. DICK,

JUDGE.

CASE No. 262 OF 1844.

Regular Appeal from the decision of the Additional Judge of the 24-Pergunnahs, Edward Deedes.

KISHNA NUND BISWAS, THEN RAJ KOONWAREE DASEE, HIS WIDOW, (PLAINTIFF,) APPELLANT,

versus

ESHAN CHUNDUR CHUTOORJEEAH AND OTHERS, (DEFENDANTS,) RESPONDENTS.

Pleaders—Gour Huree Banoorjeeah for Appellant, and Bunsee Budun and Mr. Waller for Respondents.

SUIT laid at Company's rupees 3,955-8-11, on account of arrears of revenue paid.

The state of the case in the zillah court is thus detailed in the decision of the additional judge:

" It appears from the petition of plaint that defendant, Issunchunder Chatterjee, and the ancestor of defendants, borrowed from plaintiff 20,000 rupees and mortgaged to him the talook Dhee Purrooee, &c. The money not having been paid, plaintiff sued the defendants on the judgment bond in the Supreme Court, and, on petition of plaintiff, a receiver was appointed; and after plaintiff had got a decree, and possession of the talook was given, the receiver was removed therefrom. Plaintiff further says that rupees 2,298-10, arrears of revenue, from 1239 to 1242, of the above talook, during the time of the defendant being in possession thereof, which had fallen due, was deducted by the collector from the revenue paid in by the plaintiff. He sues therefore for the sum above mentioned with interest.

" Defendants, Issunchunder Chatterjee and others, in their reply and rejoinder, say that the revenue of the talook above mentioned was paid up to Pous 1242, and that no arrears were due by them, and if an account is taken of the amount collected on account of revenue in the time of the receiver then a large sum will be found due to us, and from the dakhelas put in by the plaintiff, it is apparent

that he did not pay the revenue into the collector's office, but it was done by the receiver, and therefore plaintiff's claim is not tenable, &c.

"In proof of his claim plaintiff puts in collector's receipts and decree of the Supreme Court, and three witnesses are examined on his part; but I am of opinion that plaintiff's claim cannot be listened to.

"From the decree of the Supreme Court, it appears that the plaint was made on the 16th of March 1836, and receiver appointed on the 7th June of the same year. The decree moreover says that if the defendants, Issenchunder, &c., do not pay the amount due on the judgment bond, rupees 35,425-15-11, with interest and costs, on the 19th of December 1837, then the foreclosure will take place. I am therefore of opinion that until the date above mentioned plaintiff's right to the talook did not intervene, and moreover that the defendants' Issenchunder and others, right existed up to that period; and from the dakhilas it is clear that the sums paid in were on account of collections made during the period the talook was under charge of the receiver, and before the plaintiff had established his right to the talook. What ground therefore is there for the plaintiff suing the defendants on account of revenue paid in in the time of the receiver and before his own rights intervened? For the above reasons, considering the claim of the plaintiff to be unjust, the case is dismissed. Plaintiff to pay the costs."

In appeal, the appellant contended that the receiver was only nominally in possession, and that he himself by his deputy collected the rents and paid the revenue, and that therefore the receipts, though in the name of the receiver, were really given for sums paid by him, and that the only defence the respondents could properly make was to shew, by filing their receipts in full for the revenue payable by them during their possession, that no arrears were due by them.

The respondents replied that the very documents on which the appellant founded her claim shewed its illegality. Her husband had no right or title to the estate until after the period had elapsed, fixed by the decree of the Supreme Court for the foreclosure of the mortgage, and that as the appellant had produced no proof of her claim, it was not incumbent on them to prove aught.

JUDGMENT.

The receiver was the only person legally in possession, and he alone was authorized to pay any revenue. The receipts are in his name, and the appellant can found no claim on them. If he paid the revenue, it was a voluntary act on his part, and he must stand the consequences. In fact, however, on her own shewing, it appears that there was a *surplus* of more than six hundred rupees in the receiver's hands, when he delivered over charge of the estate, and which was ordered by the Supreme Court to be paid to appellant

on account of costs of the suit. How then could there be any demand on the respondents? The receiver most surely brought to account all the sums disbursed, whether for arrears of revenue or otherwise, paid on account of the proprietors, the respondents. Had the disputed sums been due, he would never have declared a surplus.

The decision of the lower court is affirmed, and the appeal dismissed with full costs.

THE 18TH NOVEMBER 1816.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES, and

W. B. JACKSON,

OFFICIATING TEMPORARY JUDGE.

CASE No. 161 OF 1813.

Regular Appeal from the decision of the Principal Sudder Ameen, Moolvee Kuleem Khah, of Moorshedabad.

BEEJAY GOVIND BURAL, APPELLANT, (PLAINTIFF,)

versus

KALEE DAS DHUR, AND SANUND MAYEE DASEEAH AND ALUM CHUNDUR, PARENTS AND GUARDIANS OF SREENATH DHUR, MINOR, RESPONDENTS, (DEFENDANTS.)

Pleaders—Ubus Alee Khan for Appellant, and Bunsee Budun and Pursun Koomar for Respondents.

SUIT laid at Company's rupees 12,760-3-9, for possession on a zumeendaree, called Dehee Gungur and Churkah, and sundry lots of land. Share 4 annas, 11 gundas, 1 cowree, and 1 kranth.

The plaint set forth that an ancestor of both parties, named Kirtee Chundur Dutt, acquired the zumeendaree in question, and appropriated it to the support of certain religious rites and ceremonies.

Plaintiff, his brothers, minors, and the defendants, Kalee Das and Sreenath, half brothers of the plaintiffs, inherited Kirtee Chundur's property in equal shares, and registered their names accordingly in the collectorate. The defendants collected from the zumeendaree

in question the amount of their shares, but neglected to pay up their portion of revenue, in consequence of which the zumeendaree would have been sold had not plaintiff paid their arrears, and this repeatedly. The defendants also borrowed money on the property, and let it, and even mortgaged it. They therefore had brought it into jeopardy, and consequently rendered themselves obnoxious to removal, having acted contrary to the will of their ancestor; and the plaintiff had a right to be put into possession of their share to preserve the estate according to the intentions of that ancestor.

The defence denied any dereliction of duty, and retaliated on plaintiff, but rested chiefly on the deed of appropriation, which they contended gave the old servants engaged in the rites and ceremonies, alone right to complain against the heirs; and their ancestor purposely so excluded his heirs from complaining against each other, wisely concluding that each of them would accuse the others, to gain their shares.

The principal sudder ameen, on perusal of the deed of appropriation, took the view of it set forth in the defence, and, without further investigation, declaring the plaintiff had no right to complain, dismissed his suit.

The plaintiff instituted this appeal, and urged it on the same pleas as those set forth in his plaint.

JUDGMENT.

The Court are of opinion, that the plaintiff being one of the heirs of the person who appropriated the estate for the purposes set forth in the deed, he was fully entitled to institute this suit. The principal sudder ameen should therefore have called upon the defendants to substantiate their charges against the plaintiff, and, under Clause 3, Section 12, Regulation XXVI. 1814, should in the first instance have fined them for neglect, and on repetition have proceeded as in other cases of default, instead of which he decides the case on the evidence before the court, on both parties consenting thereto. Ordered that the case be remanded. The principal sudder ameen will require both parties to file their documents and names of witnesses on every point, disputed in the pleadings, of consequence to a right issue, and then decide on the principle above laid down.

THE 18TH NOVEMBER 1846.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES, and

W. B. JACKSON,

OFFICIATING TEMPORARY JUDGE.

CASE No. 78 OF 1842.

Special Appeal from the Judge of Dacca.

GOOROO CHURN PAUL AND OTHERS, *Paupers*, APPELLANTS, (PLAINTIFFS,)

versus

BINDRABUN CHUNDER BYSACK AND OTHERS, RESPONDENTS, (DEFENDANTS.)

Pleaders—Sree Ram Race for Appellants; and Awuz Alee for Respondents.

THIS suit was instituted by the appellants, for the recovery of the sum of 904 Company's rupees, principal, with interest amounting to an equal sum, in all, for the sum total 1808 Company's rupees, on burat chittees, or assignments.

They stated that they and the respondents' father had mercantile dealings for years; that in 1233, the father of respondents, Ram Kunaee, altered the name of his firm, and instead of in his own name, carried it on under the name of the respondent, Bindrabun, his son; that afterwards, the respondent, Bindrabun, sued them for sums due, when appellants produced the assignments from his father, and prayed to have their amount brought to account as a set off. The judges however would not admit the assignments, as they were in the name of the father, and the debts claimed were to the firm of Bindrabun, but intimated that the appellants might found a suit on the assignments, whence the present claim.

The respondents denied the claim, and rested their defence principally upon the assignments having been rejected by the courts in the suit above mentioned.

The principal sudder ameen, on the assignments being filed and duly proved by witnesses, decreed the principal sum claimed, but gave interest only from the date of the institution of the suit.

The judge, in appeal, gave interest from the date of the filing of the appellants' petition to be permitted to sue as paupers. From this too the appellants filed a special appeal, which was admitted

because neither of the courts had recorded any reasons for not giving interest in full as claimed.

JUDGMENT.

The Court, seeing no reason for deviating from the established practice regarding the award of interest, decree interest from the date of the loans.

THE 23D NOVEMBER 1846.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES, and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 123 OF 1845.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Bhagulpore, Mohummud Majid Khan, February 28th 1845.

KALEE PURSHAD PANDEE, FOR SELF AND DURGA PURSHAD PANDEE, HIS MINOR BROTHER, AND LUCHMEE DUTT PANDEE, APPELLANTS, (DEFENDANTS,)

versus

RAJA BIDANUND SINGH BAHADUR, RESPONDENT, (PLAINTIFF.)

Wukeel of Appellants—Baboo Pursun Komar Thakur.

Wukeels of Respondent—A. Imlach and Gholam Sufdur.

THIS suit was instituted by respondent on the 20th of January 1844, to recover from appellants Company's rupees 11,218-2-5, principal and interest, rent due on mouzahs Damoodurpore and others, for 1249 Fuslee; with reversal of a decision passed by the collector on the 22d of February 1843, and refund of costs paid in a summary suit before that officer. Total estimated at Company's rupees 11,301-12-9.

In Magh 1247 F. respondent purchased at auction sale, the estate of Khurughpore (in which the lands claimed are situated) late the property of Rajah Ruhmut Ali Khan. No alteration being allow-

able during the year of sale purchase, he had received from appellants for the year 1247 F., in virtue of a summary decree, at the *jumma* fixed by the late proprietor. In 1248 F. he and his co-sharer, Bulnath Sahoo, made partial collections. In 1249 F. appellants realized the proceeds without any payment of rent, and Bulnath Sahoo having sold his share to respondent, the latter, as sole proprietor, sued them (appellants) summarily before the collector for the rents of that year, on a *hustabood* (rate of rent equal to the gross produce of the land) of rupees 9,073-2-6; which suit, on the 22d February, 1843, was dismissed with costs. This action is brought to cancel that decision; with the addition of interest since due, and the costs of the summary suit.

In support of the claim, as above set forth by him, respondent pleads, that, as a purchaser at a public sale, he was at liberty, from the commencement of the new year, to cancel all engagements between the late proprietor and the under-tenants, and to collect from the ryuts; and quotes Section 5, Regulation XLIV. 1793, Sections 4 and 5, Regulation V. 1812, Section 30, Regulation XI. 1822, Regulation VIII. 1819 (more particularly the 2d Section), proceedings of the Sudder Court of July 29th 1840, September 11th 1841, and September 14th 1842, and Constructions Nos. 1312 and 1333, in support of the arguments advanced by him. The collector, he proceeds to observe, objected, that the rules of Clause 2, Section 15, Regulation XIX. of 1817, had not been complied with, and that certain customary documents were either not submitted or were deficient in what was required to authenticate them; but it was not so; all that it was incumbent upon him to do, had been performed.

After a perusal of the collector's decision, it was not deemed necessary by the Court to proceed further. That decision was perfectly correct, inasmuch as, under Section 10, Regulation VIII. 1831, new demands of this nature cannot be made the subject of a summary suit; and as this action was brought expressly to cancel the collector's order, and not to try the question of right, as urged by appellants, the claim of respondent cannot be maintained. In a regular suit, the right of the plaintiff to eject the intermediate tenant depends upon the nature of the tenure;—that is, whether it is voidable or not on the sale of the estate for arrears of Government revenue; and this question is not raised in the present suit.

The decree appealed against is reversed; with all costs payable by respondent.

THE 24TH NOVEMBER 1846.
PRESENT:
A. DICK,
JUDGE.

CASE No. 166 OF 1844.

Regular Appeal from the decision of Mr. James Reily, Principal Sudder Ameen, Zillah Dacca.

CASHEEKANT BANOORJEEAH CHOWDREE, APPELLANT, (PLAINTIFF,)

versus

MOOST. RUTTUN MALA AND CASHEE PREEA DIBEEAH, MOTHERS AND GUARDIANS OF SHAMAKANT BABOO AND UMBEEKAKANT BABOO, MINORS, RESPONDENTS, (DEFENDANTS.)

Pleaders—Gholam Sufdur for Appellant; and Bunsee Budun and Pursun Koomar Thakoor for Respondents.

SUIT laid at Company's rupees 5221-7-4, for possession on divers parcels of land on the banks of a tank, and for a 12 annas share of the tank.

The decision of the principal sudder ameen is thus recorded:

"Plaintiff declares that in hissa Nilmonee Sen, joar Shahbauznugur, kismut Kalipara, he and his father were in possession of the north bank of the large tank called Bolbaree, recorded in Mr. Thompson's chitta as daug 1280, 1 kanee 15 g. 2. c. of land, and the south bank of the same tank, recorded in the same chitta as daug 1294, 4 gundas 1 cora of land, in all 1 kanee 19 g. 3 coras; and also three-fourths of the *excavated space* of the tank recorded as daug 1295 of the same chitta, that is, the rights possessed by me in virtue of my right in the north and south and west banks of the tank, having obtained them by butwarah. In 1236 defendants' husband forcibly erected a house on a portion of the south bank, and dug up some of the earth. This led to a suit in the criminal court, but nothing was settled regarding the land. In 1239 Aghun defendants' husband dispossessed me of the whole of the lands on the two banks. I brought an action for 1 kanee 19 g. 3 c. and gave evidence of my rights. The moonsiff dismissed the suit. I appealed, and the additional principal sudder ameen, at the *mutual request of both parties,* referred the suit to Moonshee Juggunnath Das. I proved my rights; but in his rooidaud he disallowed all defendants' pleas, and recorded that there is no occasion in a case of arbitration to enter into the proprietory right and title of the land. The principal sudder ameen also refused to enquire into my proprie-

tory right, and decreed that 'I, or whoever may be the owner of joar Shahbauznugur, may again sue for possession of the land in dispute.' As I am the undoubted proprietor of Nilmonee Baboo's hissa joar Shahbauznugur, and in possession of the same, I petitioned for a review of my case, but was refused. I therefore sue under the orders of the additional principal sudder ameen for the lands above stated, 1 kanee 19 g. 3 c., and also for three-fourths of the excavated space of the tank in question, that which defendants have dispossessed me of since my first suit, together with wasilaut.

Defendants contend that the arbitrator as well as the moonsiff dismissed plaintiff's suit. The principal sudder ameen also dismissed his appeal. And, plaintiff having neglected to prefer a special appeal, these awards have become final. Plaintiff, indeed, had prayed for a review upon the same grounds he has now advanced, but they were rejected, and he even petitioned the judge three times successively for a review, but was refused every time. Under these circumstances, plaintiff's case, under Section 16, Regulation III. 1793, and Construction No. 999, is clearly barred from further hearing. Besides, the arbitrator's rooidaud and the various fysullas establish the fact, that, from the year 1208, the lands have been in our husband's possession. This suit is more especially barred under Section 14 of the above Regulation. The Bolbaree tank does not belong to Neelmonee's hissa. In 1201 and 1202 Soorjyonarain Banerjee bought Petumber Baboo's hissa of the zemindaree, and he was in possession of the baree and the tank. In 1208 our husband obtained it by butwara, and was in possession from that date.

" Points for consideration:

" 1st. Did plaintiff previously sue for the lands appertaining to daugs 1280 and 1294; and do the former judgments bar the present suit?

" 2d. Has plaintiff any right to the excavated space of the tank?

" With reference to the first point, on comparing the present with the former plaint, we find that plaintiff had previously sued for the lands on the north bank of the tank daug 1280, 1 kanee 15 g. 2 c., and for the lands on the *south* bank of the tank daug 1294, 4 g. 1 cora. And the documents in the case show that the suit was made over to Jugunnath Moonshee for arbitration, and he declares in his rooidaud that '*appellant* (*plaintiff*) *cannot get the land in dispute.* Both parties are entitled, according to their hissas, to 1 kanee of the land recorded in their houladaree pottah. The proprietor alone has a right to the excess.' It is clear then that, according to the arbitrator's award, the court is not competent to adjudicate a second time regarding the lands of daugs 1280 and 1294. And though the arbitrator declares, that '*the proprietor* has a right to the lands in excess of 1 kanee of their houladaree pottah,' plaintiff has not sued for the lands as being *in excess of their houladaree pottah.* Not having done so, plaintiff has obviously sued contrary

to the arbitrator's intentions; and the present suit therefore is not cognizable.

"In considering the second point, we find that, as plaintiff did not include daug 1295, that is, the tank itself, in his former suit, there is nothing to bar his present claim for that. On the 7th March 1844, plaintiff was required in *seven* days to produce evidence of his claim on that point; but *nineteen* days have elapsed, and he has not done so. It would seem, therefore, that he included the tank only with the view to obtain a re-trial of the other daugs; and that as the case regarding those daugs cannot be re-tried, he has no desire to adduce proof of his claim to the water alone. The suit is therefore dismissed."

The appellant founded his appeal on two pleas, 1st, that his right as malik or proprietor of the estate on which the land and tank in dispute were situated, had not been investigated and decided in the former suit; and that therefore this suit was perfectly legal, and instituted as directed in the former decree, and consequently should have been determined on its merits; 2d, that the principal sudder ameen should, at any rate, have investigated the right to the tank, which formed no part of the former claim, and not have evaded it as he did.

The respondents contended that this suit was barred under Section 16, Regulation III. 1793, by the former suit and decision.

JUDGMENT.

It appears, on perusal of the former suit, that plaintiff had then sued for the property in the lands, as *proprietor* of the estate in which they were situated; but that the arbitrator, and the court, decided against him, as if he had sued for the right as howaladar, a species of fixed rent tenant, and it is recorded in the decision that whoever had the right as proprietor might sue.

The appellant has now sued as malik or proprietor, and his claim should have been fully investigated; likewise the pleas urged against it by the defendants, duly considered. Section 16, Regulation III. 1793, is no bar, under such circumstances. On the 2d point, the principal sudder ameen should have conducted his proceedings in conformity with Section 12, Regulation XXVI. 1814. He ought not to have dismissed the suit until recurrence of neglect, after the prescribed notice, fixing the day for bringing the case forward, had been duly given.

The suit remanded for re-trial on its merits.

THE 24TH NOVEMBER 1846.
PRESENT:
C. TUCKER,
JUDGE.

PETITION No. 334 OF 1845.

IN the matter of the petition of Anund Mye Chowdrain, filed in this Court on the 1st July 1845, praying for the admission of a special appeal from the decision of Mr. Fulwar Skipwith, Officiating Judge of zillah Tipperah, under date the 27th March 1845, amending that of Mahomed Ali, principal sudder ameen of said zillah, under date 21st August 1841, in the case of Musst. Jumoona, plaintiff, *versus* petitioner and Bharut Chunder, defendants.

Musst. Jumoona sued the petitioner and another, Bharut Chunder, for one-third share of the estate of Jewunkishen Naug deceased, with mesne profits from the month of Maugh 1237 to the 19th Assar 1245 B. S., and obtained from the officiating judge, Mr. F. Skipwith, a decree for one-fourth share, with mesne profits from 1236 B. S. In the course of the trial before the officiating judge, the petitioner offered objections against sundry items in the account of collections and disbursements which were overruled by the judge, without any reason being assigned. Further, it appears that though the claim of the plaintiff was decreed in part only, costs were charged to the defendants on the whole amount at which the suit was laid.

On these grounds, the application for a special appeal is admitted, and the case is hereby remanded to the judge, who will hear the objections of the petitioner against the account collections and disbursements, assigning his reasons for either rejecting or admitting the same, as regards each item of account objected to. The judge will likewise reconsider the point of wasilaut which has been granted from the year 1236, when the plaintiff only asks for it from 1237. Finally, the judge will reconsider the question of costs and adjust the account according to the established practice of the courts.

THE 25TH NOVEMBER 1846.
PRESENT:
R. BARLOW,
TEMPORARY JUDGE.

PETITION No. 786 OF 1844.

IN the matter of the petition of Cheedam Mundle, filed in this Court on the 28th September 1844, praying for the admission of a special appeal from the decision of the additional principal sudder ameen of the 24-Pergunnahs under date the 8th July 1844, revers-

ing that of the moonsiff of Putterghatta, under date 16th December 1843, in the case of petitioner, plaintiff, *versus* Bykauntnath Dutt and others, defendants.

It is hereby certified that the said application is granted on the following grounds.

The petitioner instituted a suit under Regulation V. of 1812, against the defendants, farmer of Huteeara, &c., before the deputy collector. His plaint was dismissed, and he in consequence brought an action, under the provisions of Section 6, Regulation VIII. 1831, in the court of the moonsiff, for reversal of the collector's decision, on the 3rd March 1841. He was nonsuited on the 24th November 1842. Petitioner then instituted another suit on the 20th December following, which the moonsiff decreed in his favor on the 16th December 1843. In appeal, by the defendant, to the additional principal sudder ameen, that officer reversed the moonsiff's decision on the 8th July 1844, on the ground, that the plaintiff had not brought his action for reversal of the collector's decision within the twelve months prescribed by Regulation VIII. of 1831.

BY THE COURT.

From the date of the collector's decision to the institution of the first, seven months and three days elapsed, and between the date of nonsuit and the institution of the second suit, there was an interval of twenty-six days; so that, counting the whole period during which plaintiff was in *laches*, it amounted to seven months and twenty-nine days only. The additional principal sudder ameen ought not to have considered the plaintiff in *laches* whilst the suit was in the courts from the 3rd March 1841 to the 24th November 1842. His decision is opposed to law. I therefore admit a special appeal. Let the case be brought on the regular file of the Court, and returned to the additional principal sudder ameen for trial.

THE 28TH NOVEMBER 1846.

PRESENT:

R. H. RATTRAY and
C. TUCKER,
JUDGES, and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 188 OF 1845.

Special Appeal from a decision passed by the Additional Judge of Behar, William St. Quintin, May 15th, 1844! *affirming a decree passed by the Additional Moonsiff of Gya, Kasim Ali, December* 28*th*, 1843.

POORUN MUL AND LALOO SAHOO, APPELLANTS, (DEFENDANTS,)

versus

KHEDOO SAHOO, RESPONDENT, (PLAINTIFF.)

RAJAH HET NARAIN, THIRD PARTY, CLAIMANT.

Wukeel of Appellants.—J. G. Waller.

Wukeel of Respondent—Ghelam Sufdur.

Wukeels of Third party—Baboo Pursun Komar Thakoor and Hamid Rusool.

THIS suit was instituted by respondent on the 30th of January 1843, to recover from appellants Company's rupees 133; being his perquisites of office as chowdhree of a new godown in Sahibgunge, illegally taken by appellants between the months of Asin and Magh 1250 F.

The claim was preferred by respondent on the strength of his appointment by the magistrate to the situation of chowdhree of the godown in question. The appellant, Poorun Mul, opposed the claim in virtue of a *sunnud* granted by Rajah Het Narain, the proprietor of the gunge; who put in a petition corroboratory of his statement and pretensions.

The claim of respondent was deemed good by the moonsiff, and with reference to the Court's Construction No. 816, dated August 23d, 1833, which vested the magistrates with permanent authority in such matters; and the decree passed in conformity with this opinion, was affirmed by the judge.

Against these judgments, appellants pleaded—1st, that Construction 816 had been rescinded by the Circular Order of May 6th, 1844; 2ndly, that respondent, having been dispossessed, should have sued to recover possession of the office, at its estimated value; 3rdly, that he should have included the rajah as a defendant in the suit; and, 4thly, that enquiry should have been made on the spot, to determine the value of the office and the extent of collections.

It appeared, that the Circular of the 6th of May 1844 had not reached the judge when he recorded his decision of the 15th of that month. which was therefore unwittingly passed in contravention of a then existing rule or law. The appeal was admitted with reference to this; and to determine, whether the construction which had been superseded as based on improper grounds, should be allowed to extinguish a right claimed by the proprietor, and conferred by him upon appellant. Other points were also considered as calling for consideration, when the case should be brought on for disposal.

It was afterwards found, that the right claimed by the proprietor (Rajah Het Narain) had been made the subject of an action in the

zillah court (of the principal sudder ameen,) and that, on the 11th August 1845, the suit was dismissed and the claim disallowed.

The Court are of opinion, with advertence to the Circular of the 6th May, 1844, and to the nature of the matter brought before them, that no judicial cognizance can be taken of the claim preferred. The payments to 'the chowdree' are altogether voluntary; and those who make them are not under any legal obligation to render them to any particular individual in preference to another, nor to *any* against their will, and in the exaction of what arises out of what is merely a private understanding and arrangement between those concerned, the courts cannot be called upon to interfere.

With this view of the case, the Court necessarily cancel the judgments now appealed against: the decree of the moonsiff and decision of the judge are accordingly reversed; with all costs payable by the parties respectively.

THE 28TH NOVEMBER 1846.

PRESENT:

C. TUCKER,
J. F. M. REID, and
A. DICK,
JUDGES.

CASE No. 146 OF 1845.

A Special Appeal from the decision of G. C. Cheape, Judge of Rajshahye, reversing that of Moolvee Saadut Ali Khan, Sudder Ameen of that district.

RAM NATH GHOSE, (ONE OF THE DEFENDANTS,) APPELLANT,

versus

NITYANUND DUTT AND CHYTUN KISHEN DUTT, (PLAINTIFFS,) RESPONDENTS.

Pleaders—Moonshee Mahomed Huncef for Appellant—Sri Ram Rai for Respondents.

THE plaintiffs instituted this suit on the 24th September 1841, in the zillah court of Rajshahye, under the civil jurisdiction of which the lands in dispute are situate, to set aside the sale by the collector of Mymensingh at public auction, on the 18th January 1840, of one anna of kismut Lukhee Kole, and twelve annas of kismut Bhyro Nurain, in pergunnah Burra-bazoo, assessed with a juma of rupees 15-2-0-0. They pleaded that certain sums belonging to them and their co-sharers were in deposit in the collector's hands, and ought

to have been appropriated to the payment of the small arrear due, which amounted to rupees 8-11-3, and certain irregularities in the issue of the notice of sale. They also pleaded that Ram Lochun Ghose, who is a co-sharer in the estate, had purchased the lot in the name of Ram Nath Ghose.

The collector of Mymensingh, in whose fiscal jurisduction the lot lies, and Ram Nath Ghose, the auction purchaser, defended the suit, and declared that the sale was in all points legal and unimpeachable.

The sudder ameen, Moolvee Saadut Ali Khan, dismissed the plaint on the 23d March 1843, holding that there was nothing irregular in the mode of conducting the sale.

An appeal being preferred from this decision, the judge, Mr. G. C. Cheapè, reversed the decision of the sudder ameen and decreed the reversal of the sale on the 18th November 1843.

Both the auction purchaser and the collector applied to the Court for special appeals, which were admitted by Mr. Reid on the 24th May 1843, on the following grounds.

The judge annulled the sale for the following reasons.

1st. Because the proclamation of sale was not properly issued, in as much as it was issued only at the thannah of Serajgunge, and not in thannah Raipoor. It is doubtful whether this is a sufficient reason for upsetting a sale. Section 5, Regulation VII. 1830, then extant, provides that the proclamation shall be sent to the police thannah of the division in which the lands advertised, or *some part of them*, may be situated. This plea was moreover not urged before the commissioner, when the plea urged was, that it was not published in the civil court.

2d. Because the lot which is registered in the collector's office as No. 773, is entered in the proclamation as No. 770. It is doubtful whether this is a material irregularity, which would vitiate the sale.

3d. Because a sum of money (rupees 124, 6 annas, 2 gundahs,) far exceeding the balance due, was in deposit. This deposit was in the name of Gopee Nath Rai, who is alleged to be a co-sharer with the registered proprietors. His name, however, was not registered as a proprietor, and no application was made to the collector to transfer the deposit, or any portion of it, to the credit of the estate in balance. This plea was not held to be a good one, and the appeals, prayed for by Pran Nath Ghose and the collector, were admitted to try these points.

This case, and case No. 147, were taken up by Mr. Reid, who, on the 3d June 1845, directed that they should be laid before a full Court. They were heard by Messrs Tucker, Reid, and Dick, on the 10th June 1846, and postponed to allow the Government pleader to file a copy of the petition presented by the plaintiffs to the commissioner objecting to the sale; and the respondents to file a

copy of a roobucaree of the collector, in which they alleged that he had ruled that sale proclamations affecting the property in dispute should be issued in thannah Raigunge. The respondents did not file a copy of this roobucaree, but the Government pleader filed the copy of the petition of the respondents.

BY THE COURT.

The first plea is not urged in the petition to the commissioner in detail as it ought to have been. The respondents merely denied that they had received notice of the sale, and stated generally that the notice had not been published in the proper manner. The second plea was not urged at all. They cannot therefore be pleaded as valid objections to the sale, as the courts are prohibited by Section 25, Regulation XI. 1822, from hearing any objections which have not been pleaded before the revenue authorities. Admitting however that they had been urged, they are not, in the opinion of the Court, of a nature to vitiate the sale. When an estate may be situated within two or more thannahs, it is not necessary to publish the notice in all. Under Section 5, Regulation VII. 1830, it is sufficient to publish it in any one of them. With regard to the discrepancy in the number of the estate, such irregularity is of no avail, under the provisions of Clause 4, Section 7, Regulation XI. 1822, the notice of sale having been published in the court and at one of the thannahs within which a part of the lands sold are situated. These pleas must therefore be rejected. The Court also concur with Mr. Reid, that the existence of a deposit belonging to a defaulter, cannot be held to vitiate a sale, unless it be proved that the defaulter did, prior to the sale, petition the collector to devote it to the liquidation of the arrear due by the defaulter. The Court, for these reasons, decree the appeals, and, reversing the decision of the judge, confirm that of the sudder ameen and dismiss the original plaint.

The costs of both appeals and of the original suit are to be paid by the defendants.

THE 28TH NOVEMBER 1846.

PRESENT:

C. TUCKER,
J. F. M. REID, and
A. DICK,
JUDGES.

CASE No. 147 OF 1845.

A Special Appeal from the decision of G. C. Cheape, Judge of Rajshahye, reversing that of Moolvee Saadut Ali Khan, Sudder Ameen of the district.

THE COLLECTOR OF MYMENSINGH, (ONE OF THE DEFENDANTS,) APPELLANT,

versus

NITYANUND DUTT AND CHYTUN KISHEN DUTT, (PLAINTIFFS,) RESPONDENTS.

Pleaders—Baboo Pursun Koomar Thakoor, Government Pleader, for Appellant, and Moonshee Taruck Chunder Rai, for Respondents.

THIS is an appeal from the same decision as that passed by the judge in No. 146 of 1845, which for the same reasons is reversed and the appeal decreed with costs.

THE 28TH NOVEMBER 1846.

PRESENT:

C. TUCKER and
J. F. M. REID,
JUDGES, and
R. BARLOW,
TEMPORARY JUDGE.

PETITION No. 948 OF 1844.

IN the matter of the petition of Huri Nurayn Dhur and others, filed in this Court on the 20th November 1844, praying for the admission of a special appeal from the decision of E. Bentall, judge of Jessore, under date the 16th August 1844, reversing that of Mr. J. N. Thomas, sudder ameen of Jessore, under date 28th February

1844, in the case of Prem Chund Ahungeer and others, plaintiffs, *versus* petitioners, defendants.

It is hereby certified that the case was sent back on the following grounds.

The plaintiffs had sued to recover possession of 35 begahs of land in mouzeh Doongaghata. After hearing the parties, the sudder ameen dismissed the plaintiffs' claim, but the judge, in appeal, reversed that decision, and awarded possession to the plaintiffs, with wasilat from the date of his decision.

As the English decision of the judge does not accord with the Bengalee version thereof, as copied into the final decree, the Court cannot consider the decision to have been recorded in the mode prescribed by Act XII. 1843, they therefore direct that it be quashed; and that the judge be required to record his decision at full in English, and cause a complete Bengalee translation thereof to be inserted in his decree. The petition will be considered as a summary appeal; and the value of the stampt paper on which the application of special appeal was written, will be returned as usual in such cases.

THE 28TH NOVEMBER 1846.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES, and

R. BARLOW,

TEMPORARY JUDGE.

PETITION NO. 94 OF 1845.

IN the matter of the petition of Luteef Khan, petitioner, filed in this Court on the 12th March 1845, praying for the admission of a special appeal from the decision of Mr. C. Mackay, principal sudder ameen of Mymensingh, under date the 14th December 1844, confirming that of Noorool Hossyn, moonsiff of Niklee, under date 9th May 1844, in the case of Bhola Nath Serma, plaintiff, *versus* petitioner, defendant.

It is hereby certified that the said application is granted on the following grounds.

The plaintiff sued to recover 25-12-0, the rent for two years of 6 kanees of land. The defendant pleads a lakheraj tenure. The moonsiff overruled this plea and decreed for the plaintiff. The

principal sudder ameen confirmed the decision. As the question of the validity of a lakheraj tenure is the point at issue, the moonsiff should have referred the suit to the judge, in order that he might, after referring it to the collector for report under Section 30, Regulation II. 1819, either decide it himself, or refer it to the sudder ameen or principal sudder ameen. The Construction 696 does not apply to this case, no village accounts or proof of payment of rent for last year having been produced.

The Court therefore quash the decisions of the lower courts, and direct the judge to return the case to the moonsiff with orders to proceed according to law. The stampt papers on which the petitions of appeal and application for special appeal are written, will be returned as usual.

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Regular Cases.

APPLICATIONS FOR SPECIAL APPEAL.



THE 2D DECEMBER 1846.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES, and

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 107 of 1844.

Regular Appeal from the Principal Sudder Ameen of Zillah 24-Pergunnahs, Huree Narain Ghose.

FUZL KUREEM, FOR HIMSELF AND ATTORNEY FOR BUZL RUHEEM, APPELLANTS, (DEFENDANTS,)

versus

HUBEEBOOL HOOSEIN AND HIDAIT HOOSEIN, RESPONDENTS, (PLAINTIFFS.)

Pleaders—Ghoolam Sufdur for Appellants, and Raj Narain for Respondents.

SUIT laid at Company's rupees 52,655, 14 annas, 2 gundahs, 2 cowries, for net profits from 1281 b. 10 c. of muhutteran rent free lands, and from neej jumma lands in divers named villages.

The appellants and respondents are descended from a common ancestor, who acquired the lands in question, and set apart the profits accruing therefrom, for charitable purposes. The father of appellants, and the father of the respondent Hubeeb, and the grandfather of the respondent Hidait, were three brothers. Hidait's grandfather died: and subsequently, his father and his two uncles, the fathers of appellants and of Hubeeb, in 1228 entered into an agreement, and bound themselves by a deed, sooluhnameh, to hold the property in question conjointly, (having divided all other property,) and to have the collections and disbursements from it managed by servants belonging to them in common, and to divide the profits, and to pay proportionably any excess of expenditure beyond income, or give up all claim to the property thereafter.

Within a year after the sooluhnameh was written, both the father of Hubeeb and of Hidait died; and the appellant's father assumed the sole management. The respondents were minors and had guardians appointed. These at times endeavoured to get the accounts of the collections and disbursements, but failed and nothing was done. Hubeeb attained his majority in 1241 B. Æ. and Hidait in 1236 B. Æ. They then called to account the father of appellants, but he evaded until 1245 B. Æ. when he died. And this suit was instituted in 1247 B. Æ.

In the first instance, the plaintiffs sued for only seven years of the profits, intimating they would sue afterwards for the profits of the years of their minority, and for the profits made by the defendants' father from traffic in the grain, and also for their share of ready money accumulated on the transactions of the property, as detailed in the sooluhnameh. The defendants questioned in their answer the legality of such a suit, and then plaintiffs filed a supplementary plaint, making their suit for nineteen years' profits, and including the other claims, which they alleged to have been left out by error and omission. This was admitted by the principal sudder ameen.

The defence rested solely on the assertion that the disbursements had exceeded the collections; and the plaintiffs having failed to make good their proportion of the excess, they had by a condition in the sooluhnameh, which was acknowledged, forfeited all right and title in the property; and the defendants further contended, that the plaintiffs, being out of possession, should first have sued for possession, before claiming usufruct, and that the suit was barred by lapse of time.

The principal sudder ameen rejected the plea of lapse of time, because of the minority of the plaintiffs, and considered the plaintiffs to have proved possession on the tenements on the property, and rejected the plea of plaintiffs' forfeiture, because it was clear their guardians had in vain endeavoured to obtain the accounts of the property several times. He also rejected the accounts filed by defendants of the expenditure: and finally gave a decree for the profits from the rent free lands, and from the neej jumma, or quit rent lands, of 15 villages out of 25 mentioned in the sooluhnameh. He added, that defendants might sue to recover whatever had been expended in charity, &c. for which purpose execution of decree was to be stayed for six months.

JUDGMENT.

We are of opinion that the suit is not barred by the lapse of time, for the right of the plaintiffs is clearly admitted under the sooluhnameh, and no plea of payment or receipt of profits for any one year has been set forth. We do not consider the claim analogous to a mere demand for rent, which a guardian, or manager, should have enforced at the time. 2d, We conceive the plaintiffs have forfeited no right; for neither they nor their guardians during their minority were ever called upon to pay their portion of excess. Indeed the documents and evidence produced by defendants to prove excess of expenditure beyond collections from the property, are utterly unworthy of credit.

The plea too that the plaintiffs should have sued for possession, we hold to be futile, for the suit is really and essentially for an adjustment of accounts agreeably to a deed, acknowledged as genuine by both parties; therefore the claim of the plaintiffs is just and valid

to the extent of their own legal shares. However, we cannot admit, in proof of the profits from the property, the hustobood papers, or statements of actual collections at the time of their dates, filed by plaintiffs, because they differ greatly in the number and names of villages from the sooluhnameh, on which the claim is founded, nor can we admit the estimate filed by them as sufficient proof of the expenditure. Therefore the case must be remanded to ascertain, as nearly as possible, the profits and expenditure from the property in question. The principal sudder ameen is directed to depute a trustworthy and intelligent person to institute a local investigation on the spot into the annual profits and expenditure during three years previous to the time of the inquiry; and after receipt thereof, he will strike an average from those three years, and award whatever may be due to the plaintiffs according to their legal shares, and costs in due proportion.

THE 3D DECEMBER 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE NO. 54 OF 1846.

Regular Appeal from a decision passed by the 2d Principal Sudder Ameen of Tirhoot, Syud Ushruff Hosein, December 16th 1845.

THE COLLECTOR OF SARUN, ON PART OF THE COURT OF WARDS, IN THE MATTER OF GOKUL DAS, AN IDIOT, HEIR OF BABOO BYJNATH SAHOO, DECEASED, APPELLANT, (PLAINTIFF,)

versus

RAEE KULDEEP RAM AND MOOST. MINA KOWUR, RESPONDENTS, (DEFENDANTS.)

Wukeel of Appellant—Baboo Pursun Komar Thakur.

Wukeel of Respondents—None; nor present in person.

THIS suit was instituted by appellant, on the 29th February 1844, to recover from respondents the sum of Company's rupees 1,17,056-9-7-4, principal and interest, in virtue of a bond, and of an order passed by the Patna provincial court on the 18th February 1830.

Byjnath Sahoo, the uncle of Gokul Das, had brought an action in the Patna provincial court against Raee Muhtab Ram (the husband of Moost. Mina and cousin of Kuldeep Ram, respondents,) to recover the sum of Sicca rupees 53,427-10-6, due under a bond held by him (Byjnath) bearing date Sawun 23rd 1223 Fuslee,

(August 1st 1816.) On the 30th September 1822 Muhtab Ram died; and on the 3rd December following, the case was struck off the file of the court upon a *suluhnameh* (or a deed of compromise) being presented by the then parties, Byjnath and Moost. Mina (the widow of Muhtab Ram.) The terms of this *suluhnameh* shewed that the settlement of the debt had been effected by Moost. Mina, by the mortgage (with possession) to Byjnath, of certain villages belonging to the estate of the deceased Muhtab Ram, for a period sufficient to satisfy his (Byjnath's) full claim. Before the case was disposed of thus, a protest was entered by Kuldeep Ram, declaring the arrangement in question to be calculated to deprive him of his rights as the legal heir to the estate of Muhtab Ram, and praying that all proceedings of court should remain in abeyance till the result of a suit which he himself was about to institute against Moost. Mina should determine his true position in regard to the property. No notice would appear to have been taken of this; and the case ended as just stated.

On the 30th December 1826, the claim preferred by Kuldeep Ram against Moost. Mina, which was for the entire estate of Muhtab Ram, as his nearest of kin and heir, was settled, as that of Byjnath had been, by a *suluhnameh* between them. The terms of this were, that each should hold a moiety of the property during the life of Moost. Mina, Kuldeep succeeding to the whole at her death; and each to be responsible for the debts of Muhtab Ram according to their respective shares, that is, each for half of the total amount claimable from the whole estate.

What occurred after this, up to 1830, does not appear: but in that year, on the 18th February, an order was passed by the Patna provincial court, rejecting an application for the sale of the villages mortgaged to Byjnath by Moost. Mina, as set forth in the *suluhnameh* filed in 1822; of the 'decree' founded upon which, execution was prayed. This application was strongly opposed by Kuldeep, on the grounds of his being, then, the proprietor in possession of half of the estate, and prospectively, of the whole; and pleading the incompetency of Moost. Mina to do legally what she had done fraudulently, in collusion with Byjnath, to his detriment. The opinion recorded by the Patna court, was, that there could be no doubt of the responsibilityof Moost. Mina and Kuldeep for the debts of Muhtab Ram; but, that the plaintiff (Byjnath) ought to have sued Kuldeep; which not having done, execution of the decree could not be carried into effect against the latter, and consequently the villages mortgaged to Byjnath by Moost. Mina could not then be brought to sale. If the plaintiff (Byjnath) saw fit (they added) he might institute a suit against Kuldeep, and prove to what extent the estate (of Muhtab) was liable.

Upon this order of the Patna court of the 18th February 1830, the present action was instituted on the 29th February 1844, just

fourteen years afterwards; and was at once dismissed by the principal sudder ameen, under the statute of limitation.

In appeal, it is urged, that the period between the succession of Gokul Das, the idiot heir of Byjnath, to the assumption of the function of the Court of Wards on his behalf, viz. from the 20th March 1836 to the 4th September 1839, upwards of three years, should have been deducted from the fourteen which actually intervened, and then the prescribed period would not have been exceeded; and further, that with reference to certain proceedings of the courts connected with the decree of 1822, and to claims and admissions made by Byjnath and Moost. Mina in 1831 and 1833, the cause of action might fairly be laid as of the latter year, and the institution of the suit be thus legally regarded as comparatively immediate: besides which, the admissions of Mina, of the just claim of Byjnath to the villages mortgaged by her to him, are urged as constituting a virtual acknowledgment of the justice of appellant's claim in the case now before the court, in which, it may be as well to add, she pleads the full liquidation of Byjnath's dues, from the usufruct of the mortgaged villages during the period of his possession of them.

Now, first, as respects the 'decree' of the 3d December 1822. If this was (as the word implies) a regular judicial award of the court, recognizable, as such, by other judicial tribunals of the country, the matter at issue, as regards the respondent Moost. Mina, has already been disposed of: for the order of the same court, (the provincial court at Patna,) disallowing execution of the compromise between the parties of 1822, recorded in it, was a summary proceeding, and could in no wise cancel the formal judgment passed in a regular decree; which, however ineffective, has (as in the present instance) never been rescinded: and, thus, that is now sued for, which was adjudged, to the party again claiming it, above twenty years ago; the only change being in the amount of interest which has since accrued.

But the fact is, this proceeding of 1822 was not a decree, nor a decision of the court, under any acceptation of the term. Before the court had recorded or could have formed any opinion on the merits of the case, the parties themselves adjusted the question at issue between them; filed their *suluhnameh;* and had their suit, not *decided,* but struck off the file, with a return of the value of the stamp-paper: by which, under the law, no further judicial interference, in the way of execution or compulsion of any kind, could follow.

Of what avail then are Moost. Mina's admissions of 1833, of Byjnath's right to the villages she had illegally mortgaged to him? By the agreement between her and Kuldeep, of 1826, the debts of Muhtab Ram were (as above stated) to be considered as divided between them, in the same proportion as his estate: but this was

not an arrangement made with reference to the particular debt to Byjnath: there were a host of other creditors: nor did it involve any pledge beyond the mutual one between themselves. The possession of the moiety of the estate by Moost. Mina, was merely a life tenure, with reversion to Kuldeep on her demise: how then could any solitary admission on her part, so deeply affecting his interests, be acted upon without hearing his plea as a party to the proceeding?

The order of the Patna court of the 18th February 1830, has been made the cause of action in this case. That order was (as before observed) the result of a summary proceeding held on a petition for the execution of the 'decree' of 1822; and the substance of it was, that Byjnath ought to have sued Kuldeep when he sued Moost. Mina; and that if he saw fit, he might still sue him. Of course the concluding portion of this never contemplated a sanction to Byjnath to sue in violation of the law,—after the period prescribed by law, that is: and giving to the first portion the only meaning applicable to it, the court's opinion was, that on the death of Muhtab Ram, Kuldeep should have been associated with Moost. Mina (Muhtab's widow) as a defendant, by the plaintiff Byjnath. Why he was not so, it were difficult to say; for the petition presented by him before the case of 1822 was disposed of, is sufficient evidence of his having been at the time an open claimant to the property which Moost. Mina was transferring to the plaintiff's hands in the face of his protest against her competency.

But, to conclude: Muhtab Ram died on the 30th September 1822; and after deducting three years and a half for the period of the idiot's, Gokul Das's, occupancy, there remains, to the 29th February 1844, when this action was brought, an interval of seventeen years; being five years in excess of that allowed by the statute of limitation.

With this statute before me, I cannot permit the plea of equity to operate against it, and on this point I withhold the opinion which I am not called upon to furnish. There cannot be a doubt of appellant's pleas for a legal cognizance of his claim, being inadmissible; and I affirm the decision appealed from accordingly. All costs to be chargeable to appellant.

THE 9TH DECEMBER 1846.

PRESENT:

J. F. M. REID and

A. DICK,

JUDGES, and

W. B. JACKSON,

OFFG. TEMPORARY JUDGE.

CASE No. 275 of 1842.

Special Appeal from the decision of the Judge of Zillah Dinagepore.

GOUR MUNNEE DASEEAH, APPELLANT, (DEFENDANT,)

versus

PARBUTTEE DASEEAH, RESPONDENT, (PLAINTIFF.)

THE respondent sued to render null and void an adoption made by the appellant, on the ground of its being illegal and she the legal heir of the property, half share, of appellant's husband, deceased, her own brother, after the decease of her and his mother, in virtue of her having a son. For the other half share she did not sue in consequence of one of her sisters having also a son. Afterwards the sister's son dying, *pendente lite*, she included it likewise in the suit in a supplementary plaint. The appellant in answer contended that the respondent had no right to bring forward any claim during her lifetime, and that of her adopted son and of her own mother; that the supplementary claim was illegal and contrary to practice; and that the adoption was good and valid.

The case was first tried by the principal sudder ameen, who declared the adoption invalid, and decreed the claim of respondent to belong to her son.

In appeal, the judge, also deeming the adoption invalid, confirmed the decision of the principal sudder ameen.

The special appeal was admitted on three points: 1st, whether the principal sudder ameen was correct in ordering the plaintiff to make the adopted son, a minor, a defendant; 2dly, whether the judge was correct in allowing the plaintiff to sue for the whole share in the supplementary plaint, after having commenced the suit for half only; 3dly, was the judge justified in refusing to refer the law opinion of the pundit of the Moorshedabad court, for the opinion of the pundit of the Sudder Court.

JUDGMENT.

The Court are of opinion, on the reasons detailed in the principal sudder ameen's decision, that the adoption by appellant is invalid; and see no reason to question the right of the respondent to institute a suit to render it void, in behalf virtually of her son, a minor. Her claim, however, to possession as heir after her mother, is altogether illegal. They therefore amend the decision of the principal sudder ameen affirmed by the zillah judge, upholding that portion which declares the adoption invalid, and dismissing the respondent's claim to possession as heir of her mother. Each party to pay their own costs.

As the right of respondent to sue at all, save in her son's name as guardian, was mooted during the trial of the special appeal, the son of respondent requested through his pleader, to file a consent to her suit: this the Court did not consider necessary, and disallowed.

THE 10TH DECEMBER 1846.

PRESENT:

R. H. RATTRAY,

JUDGE.

CASE NO. 151 of 1843.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Purnea, Mohummud Rokunodeen Khan, March 31st 1843.

JOHN JEFFERSON COWIE, APPELLANT, (PLAINTIFF,)

versus

SHEIKH KUFAITOOLLAH, DECEASED, DEEDAR HOSEIN AND OTHERS, SONS OF DITTO, RESPONDENTS, (DEFENDANTS.)

Wukeel of Appellant—Mohummud Huneef.

Wukeel of Respondents—Ameer Ali.

THIS suit was instituted by appellant on the 17th December 1842, to recover from the respondent, Kufaitoollah, the sum of Company's rupees 10,715-0-6, due on a *Kistbundee* (or instalment bond,) principal and interest, and for costs of suit, in a case disposed of by the local court on the 8th December 1840, amounting to Company's rupees 1,170-5-6.

A few words will suffice in explanation of this case. The *kistbundee* in question was stated in the plaint to have been executed by the respondent, Kufaitoollah, and two other persons, Tureekollah and Jumalodeen; the two latter, lessees of certain lands in the talook of Buldee-Khora, pergunnah Huwelee, of which appellant is official

manager, and Kufaitoollah, their *malzamin* (or security for the performance of the terms of the lease.) A supplementary plaint was put in, correcting the first, as to the parties to *kistbundee*, which was now represented as executed by Kufaitoollah only, who denied it. Five witnesses had attested the deed: of these, two were dead; one was not forthcoming; and two attended and gave evidence. One of these denied any knowledge whatever of the transaction; the other swore to the deed itself and to its having been executed and signed by the three individuals before named. The deed bore the signature of Kufaitoollah only. Appellant asserts, that there has been collusion between the witnesses and respondent; but there is no evidence to this fact, and of course a claim, so supported, cannot be upheld.

The 'costs of suit' sued for, were incurred by appellant in a case brought by him before the court, to recover the first three instalments of this same *kistbundee;* which case, in consequence of neglect to proceed on the part of the plaintiff (appellant) was struck off the file of the court on the date above noted. What could have induced an expectation of a favorable result to a claim of such a nature, it were difficult to imagine.

The principal sudder ameen dismissed the suit in the absence of evidence to warrant any other judgment; and his decision is hereby affirmed, with all costs chargeable to appellant.

The delay attending the final disposal of this appeal was caused by the resignation of the vukeel originally appointed and the tardy nomination of another; and, by the death of *Kufaitoollah*, and the subsequent proceedings in the courts before heirs appeared and admitted of the case being brought to a hearing.

THE 10TH DECEMBER 1846.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES, and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 185 of 1845.

Special Appeal from a decision passed by the Judge of Tirhoot, David Pringle, 24th May 1844, *affirming a decree passed by the 2d Principal Sudder Ameen, Niamut Ali, 21st December* 1841.

MOHUNT MUNOHUR DAS, APPELLANT, (DEFENDANT, AND OTHERS,)

versus

MOHUNT JYGRAM DAS, RESPONDENT, (PLAINTIFF.)

Wukeel of Appellant—Mahomed Huneef.

Wukeel of Respondent—Gholâm Ahmed.

THIS suit was instituted by respondent on the 3d October 1839, to obtain execution of a decree passed by a punchâyet, and possession of 90 beegahs, 15 beeswas, 11 dhoons of rent-free land, in mouzah Phoolhur. Eighteen products, estimated at Company's rupees 1411-10-3.

The land in dispute in this case, it was admitted by respondent, was resumed by Government, and a settlement for it made with appellant and others (defendants.) On the ground of a portion of the land thus resumed and assessed, viz. the quantity above noted, being his property, as belonging to Phoolhur (of which he is proprietor,) and of its having been resumed as appertaining to Kungore (appellant's village,) he instituted this suit, claiming the land as rent free; and succeeded in obtaining a decree from the principal sudder ameen, and an affirmation of the same by the judge, as above recorded.

The Court observe, that the ordinary courts have no jurisdiction in cases of this nature; and that respondent, admitting, as he did, that the land had been resumed by Government, should have sought redress in the resumption court. The decisions appealed from must necessarily be reversed, which they are accordingly; with all costs payable by respondent.

THE 10TH DECEMBER 1846.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES, and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 192 OF 1845.

Regular Appeal from a decision passed by the 1st Principal Sudder Ameen of Tirhoot, Niamut Ali Khan, April 19th 1845.

RAMPURSHAD CHOWDHREE, SHEOPURSHAD CHOWDHREE, BHOLANATH CHOWDHREE, AND GOURPURSHAD CHOWDHREE, HEIRS OF MYARAM CHOWDHREE, DECEASED, APPELLANTS, (PLAINTIFFS,)

versus

SHUMSO NISSA, ALIAS HOSEIN BEGUM, WIDOW OF AHMUD HOSEIN KHAN, AND MOTHER AND GUARDIAN OF JAFUR HOSEIN KHAN, A MINOR; ABBAS HOSEIN KHAN; ALI HUSSUN; AND FIVE OTHERS, RESPONDENTS, (DEFENDANTS.)

Wukeel of Appellants—Latf-o-Ruhman,
Wukeel of Respondents—Ameer Ali.

THIS suit was instituted by appellants on the 17th January 1844, to recover from respondents the sum of Company's rupees 6,151-10-4, principal and interest, being the amount of an advance made on 202 *beegahs*, 11 *beeswas*, and 15 *dhoors* of land, and 45 tal trees, comprehended in a 5 annas, 1 d., 1 c., share of mouzah Jurooa, pergunnah Hajipore.

On the 13th Jeyt 1228 Fuslee, appellants advanced 4000 Sicca rupees to respondents, in consideration of a lease of the above property for six years; an annual rent of 98 rupees being payable by the former to the latter.

It was stipulated, that, if the sum advanced, together with mofussil balances, was not paid at the close of the lease, it should remain in force, and so continue till the amount due should be satisfied. Appellants held possession from Jeyt 1228 to the end of Phagoon 1247 F. On the 8th of Cheyt, that year, the entire village was sold for arrears of Government revenue; and the purchaser of course dispossessed them.

The principal sudder ameen dismissed the suit under the statute of limitation; having, after arriving at the opinion which called for this disposal of it, entered into the merits of the case, and recorded his belief, that the full sum due to appellants had not only been liquidated, but paid twice over, from the usufruct, the persuasion to this effect resting on the assertion of respondents against the solemn denial of appellants, and in the absence of any evidence of such being the fact.

Appellants evidently founded their action on the *letter* of the engagement they had entered into, viz. that they were to retain possession of the property till the amount of their advance should be repaid to them in *one sum* by respondents; the usufruct enjoyed, being a set-off against the interest. But with reference to Section 10, Regulation XV. 1793, this cannot be upheld: were it admitted, the restriction to a fixed maximum of interest would be virtually cancelled.

The statute of limitation has evidently no bearing whatever on the case; and had the principal sudder ameen required appellants to file their accounts, made them the basis of his opinion in regard to their claim having been satisfied, and so disposed of the case, every thing necessary had been performed.

As it is, the Court cancel the decision appealed against, and direct that appellants be called upon to submit their accounts, upon an examination of which, only, an equitable judgment can be formed and the claim properly disposed of. The usual order will issue in regard to stamps; and costs be determined and adjudged on the re-trial.

THE 10TH DECEMBER 1846.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES, and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 205 OF 1845.

Special Appeal from a decree passed by the Principal Sudder Ameen of Shahabad, Syud Munowur Ali, April 3d 1844; reversing a decree passed by the Moonsiff Mazum Hosein Khan, August 8th 1843.

PUNJAB RAEE, APPELLANT, (PLAINTIFF,)

versus

RAM CHURN LAL AND BHOWANEE DAS, RESPONDENTS, (DEFENDANTS.)

Wukeel of Appellant—Luchmee Purshad.

Wukeel of Respondents—Mohummud Huneef.

THIS suit was instituted by appellant on the 24th February 1842, to recover from respondents Company's rupees 59-7, principal and interest, the amount of a balance of rent due on 16 *beegahs* 15 *dhoors* of land, situated in mouzah Chunda-Akhoree, for the year 1248 Fuslee.

Appellant sued, as above, in virtue of a *kubooleut* (or acknowledgment of the terms of a lease) executed by Ram Churn Lal, respondent; Bhowanee Das being his security; and obtained a decree, on the general merits of the case, from the moonsiff.

By a previous decision passed under Act. IV. of 1840, appellant had been maintained in possession; and no regular suit had been instituted to contest that decision.

On appeal, the principal sudder ameen, without entering into the question of the genuineness of the *kabooleut,* on which appellant's claim was grounded, reversed the decree of the moonsiff; because, it appeared from the evidence that the land had been cultivated some years previously, and up to the year 1244 F. under a *bhâolee* tenure (by which the rent is satisfied by a division of the produce of the land, in kind); at the same time admitting the occupancy of respondent.

Now, this proceeding is contrary to the practice of the courts, and has manifestly no tenable ground to rest upon. The nature of the previous tenure had nothing whatever to do with the existing state of things at the time the cause of action arose in the case to be determined; which should have been disposed of on the evidence adduced to establish the validity of the *kabooleut,* and security of the respondent Bhowânee Das.

The Court accordingly cancel the decree of the principal sudder ameen; and remand the case, to be decided on its merits, in respect to the points mentioned as those on which the issue depended. The usual order will pass in regard to stamps; and costs be determined and adjudged on the re-trial.

THE 10TH DECEMBER 1846.

PRESENT:

R. H. RATTRAY and

C. TUCKER,

JUDGES, and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 217 OF 1845.

Special Appeal from a decree passed by the Principal Sudder Ameen of Shahabad, as noted under No. 205 of 1845, April 3d 1844.

BAL GOVIND AND OTHERS, APPELLANTS, (PLAINTIFFS,)

versus

RAM CHURN LAL AND BHOWANEE DAS, RESPONDENTS, (DEFENDANTS.)

Wukeel of Appellants—J. G. Waller.
Wukeel of Respondents—Mohummud Huneef.

THIS suit was instituted by appellants on the 28th January 1843, to recover from respondents Company's rupees 54-4, principal and interest, the amount of a balance of rent due on 16 *beegahs* 15 *dhoors* of land, situated in mouzah Chunda Akhoree, for the year 1245 Fuslee.

The circumstances of the case and grounds of decision, are precisely those exhibited under No. 205 of 1845; and the Court direct the disposal of the appeal as set forth in their judgment recorded under that number.

THE 10TH DECEMBER 1846.

PRESENT:

R. H. RATTRAY and
C. TUCKER,
JUDGES, and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 218 OF 1845.

Special Appeal from a decree passed by the Principal Sudder Ameen of Shahabad, as noted under No. 205 of 1845, April 3d 1844.

BAL GOVIND AND OTHERS, APPELLANTS, (PLAINTIFFS,)

versus

RAM CHURN LAL AND BHOWANEE DAS, RESPONDENTS, (DEFENDANTS.)

Wukeel of Appellants—J. G. Waller.

Wukeel of Respondents—Mohummud Huneef.

THIS suit was instituted by appellants on the 28th January 1843, to recover from respondents Company's rupees 65-7, principal and interest, the amount of a balance of rent due on 16 *beegahs* 15 *dhoors* of land, situated in mouzah Chunda Akhoree, for the year 1246-7 Fuslee.

The circumstances of the case and grounds of decision, are precisely those exhibited under No. 205 of 1845; and the Court direct the disposal of the appeal as set forth in their judgment recorded under that number.

THE 12TH DECEMBER 1846.

PRESENT:

J. F. M. REID,

JUDGE.

PETITION No. 350 OF 1845.

IN the matter of the petition of Mr. P. Rayson, petitioner, filed in this Court on the 3d July 1845, praying for the admission of a special appeal from the decision of Rai Ram Lochun Ghose, principal sudder ameen of zillah Nuddea, under date the 7th April 1845, confirming that of Moulvee Syud Ahmed Buksh, sudder ameen of the same district, under date 15th August 1843, in the case of petitioner, plaintiff, *versus* Bamun Doss Mokerjee and others, defendants.

Baboo Pursun Koomar, Pleader for the petitioner.

It is hereby certified that the said application is granted and the case returned for re-trial on the following grounds.

Plaintiff sued to obtain possession of 127 beegahs 6 biswas of chur land, attached to 12 annas of kismut Bhoobunbattee *alias* Akunddanga in pergunnah Mahomed-ameen-poor, zillah Nuddea, purchased by him under 2 kubalehs from Gowree Pershad Chukerbutty, which the collector had settled with Bamun Doss Mookerjee and others proprietors of mouzah Pulea. Suit laid with mesne profits at 741 rupees, 13 annas, 0 pie. The sudder ameen dismissed the claim, because the former proprietor did not make any objection when the collector was making the settlement, and the principal sudder ameen confirmed the decision. The collector's settlement roobacaree of 17th August 1839, called for by the Court, indicates that Gouree Pershad the former proprietor did claim the chur land, and that the collector rejected his claim, a fact acknowledged by the defendant in his answer. Even had not Gouree Pershad urged the claim, it seems hard that, if the land was *bona fide* included in the plaintiff's purchase, he should be debarred from claiming it on discovering the error of the late proprietor his vendor. I therefore consider the decision of the lower courts incomplete, and, admitting the appeal, remand the case to the file of the sudder ameen, that the right of the plaintiff to the land under his purchase may be duly investigated. The usual order is passed for the return of the stampt papers on which the petitions of appeal and special appeal are written.

THE 15TH DECEMBER 1846.

PRESENT:

A. DICK,

JUDGE.

CASE No. 172 of 1844.

Regular Appeal from the decision of the 2d Principal Sudder Ameen of Zillah Chittagong, Moulvee Muneer Oodeen.

MUHESH CHUNDER DAS, CANOONGOE, APPELLANT, (DEFENDANT,)

versus

SALT AGENT ON THE PART OF GOVERNMENT, RESPONDENT, (PLAINTIFF.)

Pleaders—Usmut Oola for Appellant, and Pursun Koomar Thakoor for Respondent.

APPEAL laid at Company's rupees 7353-13-4-2, balance of advances due.

This suit was founded on a deed given by the appellant, a factor, or gomashtah, of a Company's commercial factory, to the then agent, in 1822; admitting the balances in question to be due by him, and a former gomashtah, for which the appellant would not in any way account, or liquidate, though several times summoned so to do. The appellant filed an answer in the zillah, acknowledging the deed; but asserting that no balance was due by him; that the balances therein admitted to be outstanding were due by the former gomashtah, and by the manufacturers, who had received the advances. He did not however produce any proof of his assertion, nor aught in refutation of the documents filed by respondent to substantiate his plaint.

The principal sudder ameen, deeming the amount inserted in the deed, during the factorship of the appellant, due by him, as it was in proof he had several times been summoned to account for the balance evaded, decreed it against him; but released him and his descendants and sureties of the former gomashtah, from the payment of the balance inserted in the deed as belonging to the time of the latter, as the deed had not been given or signed by him, and respondent had filed no other proof regarding that balance.

The appellant in his appeal repeated much of what he had inserted in his answer, and contended that a searching inquiry should have been made into the books and accounts of the agency; and that the principal sudder ameen should not have rested satisfied with the mere assertion of the respondent, that the books and papers of the agency had been sunk in a boat on their way to another place after the abolition of the agency. He also contended that the suit was barred by lapse of time.

JUDGMENT.

It appears on record, that the appellant, after filing his answer, never again appeared in the lower court, either in person or by pleader, or filed any proofs, although so desired during nearly six months that the suit was pending. His objections therefore, now for the first time urged against the respondent's proofs, cannot be heard. As the Government are the claimants, the suit is not barred by lapse of twelve years from its origin. The decision of the principal sudder ameen is correct and equitable. It is therefore affirmed, and the appeal dismissed with full costs.

THE 15TH DECEMBER 1846.

PRESENT:

C. TUCKER,

JUDGE.

PETITION NO. 328 OF 1845.

IN the matter of the petition of Goluck Chunder Biswas, filed in this Court on the 28th June 1845, praying for the admission of a special appeal from the decision of Mahomed Kulleem, first principal sudder ameen of zillah Jessore, under date the 26th March 1845, reversing that of Syud Bukaoolah, moonsiff of Commercolly, of said zillah, under date the 27th September 1844, in the case of Goluck Chunder Biswas, plaintiff, *versus* Sumboo Chunder Rae, defendant.

Sumboo Chunder Rae, the defendant in this case, having obtained a summary decree under Regulation VII. 1799, for arrears of rent, against Goluck Chunder Biswas and Kali Pershad Naug, the former brought the present suit to contest the summary award, and was successful in the moonsiff's court. On appeal, the principal sudder ameen nonsuited the petitioner, because, not being joined by Kali Pershad Naug in bringing the suit, he did not make him a defendant.

This measure is not only contrary to general practice, but is opposed to an order passed by the same principal sudder ameen, in another suit between the same parties, on the following day. Sumboo Chunder Rae, subsequently to the above summary decision in his favor, proceeded against the same persons, Goluck Chunder Biswas and Kali Pershad Naug, under Regulation V. 1812, by attachment of property. Goluck Chunder Biswas alone instituted a suit, disputing the alleged balance against Sumboo Chunder Rae, which was decreed by the moonsiff, and affirmed by the principal sudder ameen on 27th March 1845.

I therefore admit the special appeal, and, cancelling the principal sudder ameen's order of 26th March 1845, nonsuiting the petitioner, direct that the case be remanded to the principal sudder ameen for trial on its merits.

THE 16TH DECEMBER 1846.
PRESENT:
R. H. RATTRAY,
JUDGE.

CASE No. 66 OF 1846.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Behar, Hedayet Ali Khan, 27th December 1846.

RAJAH JYMUNGUL SINGH, APPELLANT, (PLAINTIFF,)

versus

BABOO HOLAS SINGH, FOR SELF AND ANOTHER, RESPONDENT, (DEFENDANT.)

Wukeels of Appellant—J. G. Waller and Hamid Rusool.

Wukeel of Respondent—Gholam Sufdur.

THIS suit was instituted by appellant, on the 5th May 1842, to obtain possession from respondent of 3000 *beegahs* of land, appertaining to mouzah Purtabpore and other mouzahs; with reversal of an order passed by the deputy collector on the 10th January 1842, affirmed by the superintendent of surveys on the 16th February following. The estimated value of the land, Company's rupees 8000.

The proceeding of the deputy collector, which this suit has been brought to cancel, was founded upon the records of former years bearing upon the question at issue, besides the testimony adduced to establish the more recent facts and circumstances which led to that officer's interference. The documents before submitted were again produced; and, upon these, the principal sudder ameen determined, that the right to the land claimed, lay with respondent.

There cannot, apparently, be any reasonable doubt of the correctness of this judgment: but there is no occasion to enter further into the case, than to state, that, amongst the documents filed by respondent before the deputy collector, and now before the Court, is a proceeding of the joint magistrate, dated the 15th September 1831, held under Regulation XV. of 1824, from which the right of respondent to the land contested is evident. The possession adjudged by that proceeding, has never been made the subject of a civil action; and, under the law, the order must now be upheld as of equal force with the judicial award of a civil court; and cannot be contravened or rescinded.

Upon the same grounds then, as those upon which the principal sudder ameen has based his decision, that decision is hereby affirmed, with all costs payable by appellant.

THE 17TH DECEMBER 1846.

PRESENT:

R. H. RATTRAY and
C. TUCKER,
JUDGES, and
R. BARLOW,
TEMPORARY JUDGE.

CASE No. 350 OF 1845.

Special Appeal from a decision passed by the Officiating Judge of Bhagulpore, H. C. Metcalfe, May 7th 1844; *affirming a decree passed by the Moonsiff of Soorijgurh, March* 12*th* 1844.

SYUD SHAH MOHUMMUD YASIM, APPELLANT,
(DEFENDANT, WITH OTHERS,)

versus

SYUD ENAIT HOSEIN AND OTHERS, RESPONDENTS,
(PLAINTIFFS.)

Wukeels of Appellant—Gholam Sufdar, Gholam Ahmud, and Lutf-o-Ruhman.

Wukeels of Respondents—J. G. Waller and Hamid Rusool.

THIS suit was instituted by respondents on the 8th August 1842, to obtain the registry of their names in the collector's office as proprietors of a 1 *anna,* 17 *gundahs,* 17 *cowrie's* share of mouzah Hurdee. Three *jummas* estimated at rupees 41-8-6.

The claim was determined, on the evidence adduced in support of it, by the moonsiff, in favor of respondents; and the decree was upheld without any exception being taken to the proceedings of the lower court, by the officiating judge.

On a special appeal being preferred in this Court, the Judge before whom the petition came, was of opinion, that it should be admitted; first, to try whether the plaintiffs (respondents) had properly laid their suit at three times the *jumma* (or amount of Government revenue) instead of at the value or selling price of the land, there being no defined assessment of the village to which the portion claimed belonged; and, secondly, because the moonsiff's decision appeared to be opposed to one passed by the deputy collector of Bhagulpore on the 18th November 1837, affirmed by the commissioner on the 28th April 1838; which had decreed, in a suit to resume the same, under Regulation II. of 1819, the right of defendants (appellant and others) to hold the village in question and other villages, on a *mokurruree* tenure (in perpetuity, that is) under a

sunnud granted by Nuwab Aliverdi Khan, long prior to the decennial settlement, and in virtue of other *sunnuds*, subsequently obtained by them; the claims based upon which *sunnuds* had been rejected.

With respect to the first ground of admission, the Court observe, that when such questions arise, they must be taken as interlocutory motions, and be disposed of before the merits of the case with which they stand connected, are entered upon; the party dissatisfied being at liberty to appeal, summarily or regularly, against the disposal: this was not done in the present instance. The Circular Order of the 20th August 1841, No. 161, exhibits the mode of proceeding on these questions; and the Court's judgment in the appeal case No. 115, decided on the 2d November last, is an illustration of the legal consequences of a neglect of that order.

On the second point, the Court are of opinion, that it was competent to the courts below to go into the question of proprietary right. The resumption courts decide whether a tenure is or is not liable to assessment: the proprietary right is altogether a distinct matter; and may be afterwards contested in any of the ordinary courts having jurisdiction. In the case before the Court, the grounds assigned are not those upon which a special appeal might be upheld.

The decision of the lower court is accordingly affirmed; with costs chargeable to appellant.

THE 19TH DECEMBER 1846.

PRESENT:

C. TUCKER and

J. F. M. REID,

JUDGES, and

R. BARLOW,

TEMPORARY JUDGE.

CASE No. 309 OF 1844.

RUTTUN MONEE DASSEE, WIDOW, AND LAL BEHAREE BABOO, ADOPTED SON OF KOKARAM BABOO, (DEFENDANTS,) APPELLANTS,

versus.

BIRMA MAYEE DASSEE, ALSO WIDOW OF KOKARAM, AS GUARDIAN AND MOTHER FIRST OF KOONJ BEHAREE, ADOPTED SON, AND THEN ON HIS DEMISE OF BEEPUR BEHAREE, THE SECOND ADOPTED SON OF THE SAID KOKARAM, (PLAINTIFF,) RESPONDENT.

CASE No. 310 OF 1844.

LAL BEHAREE BABOO, (PLAINTIFF,) APPELLANT,

versus

BIRMA MAYEE DASSEE, (DEFENDANT,) RESPONDENT.

Pleaders—Gholam Sufder and Prosonno Komar Tagore for Lal Beharee, and J. G. Waller and Bunhshee Buddun Mittre for Birma Mayee Dassee.

THESE are two regular appeals from decisions passed on the 4th of September 1844, by the principal sudder ameen of Rajshahye.

It will be seen that the parties in these cases are the same. In case No. 309 the plaintiff, as guardian and mother of the adopted son of Kokaram Baboo deceased, estimated her action at Company's rupees 2,92,715-8-5, and claimed half of her deceased husband's estate. In case No. 310 the plaintiff sued to set aside the alleged adoption of Beepur Beharee Baboo by Birma Mayee Dassee.

The plaint in the first case was filed on the 20th December 1842. It is therein stated that Kokaram married the plaintiff Birma Mayee in 1238, in consequence of two of the Baboo's wives having died and the third Ruttun Monee being childless. That the Baboo in 1239 purchased the only son of Bharut Chunder Shah, then aged 14 years, and made him over to Ruttun Monee; that he gave him the name of Lal Beharee, and kept him at home, calling him the adopted son of Ruttun Monee; that plaintiff bore several daughters to the Baboo, all of whom died; and that he in consequence of the illegality of the adoption of Lal Beharee, who could not perform the ceremonies prescribed by the Hindoo law, on the 1st of Kartick 1245 drew a deed in the following terms: "that should I bear no son to him, or, having borne one, should he die before me, I might adopt sons to the number of five, in succession one to the other. I and Ruttun Monee were to enjoy my husband's entire estate in half shares so long as we live; after my death my adopted son was to succeed to my share, and Ruttun Monee's heirs were to succeed to her share on her death," &c. &c. Plaintiff then goes on to state that her husband died at Moorshedabad on the 16th Maugh 1246, leaving her *enceinte;* and on his death herself and Ruttun Monee performed his funeral obsequies; being females they constituted Lal Beharee manager on their part, when he laid plans to prevent plaintiff adopting a son, and caused his own name to be entered *in loco* that of Kokaram, in the case he brought against Jye Sunker Sundeeal for the Ghora Mara bazar, and applied for entry of his name in the collector's books in the *tahood* of turf Banowlee, &c, which was done. I appealed on this, and Lal Beharee consented to adjust with me, and a deed was accordingly prepared, dividing the property in 10 annas

and 6 annas shares between us; it was registered but not carried into execution. As Ruttun Monee and Lal Beharee wished to deprive me of my rights I protested in the Ghora Mara bazar case, resting my claims on the deed of permission to adopt granted by my husband, and repudiated the adoption of Lal Beharee, but the principal sudder ameen rejected my petition because I did not prosecute my case; the judge, however, after receipt of certain orders from the Sudder Dewanny Adawlut admitted me to plead in the above case and also in another on the part of Koonj Beharee as his guardian. They have notwithstanding ousted me of my rights since the year 1248, and deprived me of my share of real and personal property. During Ruttun Monee's life I can only claim one half of my husband's estate, for which I now sue them. My husband possessed property in Calcutta, Rajshahee, and other districts, but the value of that in Rajshahee exceeds the value of his estates elsewhere: I therefore bring this action in this court.

Answer of Lal Beharee:—I was a child and the third son of my parents when adopted by my deceased father Kokaram in Jheit 1232 during Kokaram's lifetime: when I attained my majority I was in charge of his affairs: in 1245, in the month of Phalgoon, he had me married and performed the "nandy mook shrad," and I carried on his business to his satisfaction, a fact which is notorious. Kokaram died in 1246, and I performed his funeral rites and had my name entered in lieu of his, and no objection was made till I demanded from Neel Kanth Shah, one of Kokaram's servants, his accounts, when he induced Radha Govind, plaintiff's brother, and also two of Kokaram's sisters, promising them a monthly allowance, to join with plaintiff against me. The "ijazutnameh" put in by the plaintiff was never during Kokaram's life produced in any court or registered; it was not forthcoming immediately on his death before any public authority. A second adoption, as I am alive, is moreover contrary to the Shasters. I never entered into any adjustment with the plaintiff, nor did I sign any deed to that effect.

The principal sudder ameen, on the 4th September 1844, decreed a half share of the deceased Kokaram's estate to the plaintiff on the ground of the deed of permission to adopt, and, at the same time, awarded the other half to the defendant, holding that he had established the fact of his being the adopted son of Kokaram Baboo, and recognized by him during his lifetime as such; providing, however, that the two widows should enjoy their half shares during their lives, which should on their deaths descend to their heirs.

By the Court.

The first point for the Court's consideration is the integrity or otherwise of the deed of permission to adopt, put in by the plaintiff, which bears date the 1st Kartik 1245. The evidence of the writer

of this document and of the witnesses subscribing to it goes directly to the point and proves it; but the Court are not disposed to place that reliance on it which the principal sudder ameen has given to it for the following reasons.

It is admitted by all parties that Lal Beharee was adopted by Kokaram in 1232, and from that period till 1246, on several occasions, public and private, was acknowledged by him as his adopted son; it is further proved that the deceased carried on business with Radha Nund Shah in the name of Lal Beharee, calling him his son, and the evidence thus furnished by the acts of the deceased during a course of years, the Court hold to be much stronger and worthy of more credit than the depositions of the witnesses who have been examined on the part of the plaintiff, upon whose statements considerable doubt is cast by circumstances set forth on the record. The Court, having confined themselves to the investigation of this one point, and finding that the integrity of the deed on which plaintiff claims on part of her adopted son, is by no means established, deem it unnecessary to prosecute the enquiry further. They dismiss the plaint, and decree for the appellant with costs. The decision of this case necessarily involves the merits of the appeal No. 310 in which the appellant sues to set aside the adoption made by Birmo Mayee, under alleged permission from her husband. The Court observe that the plaintiff, Lal Beharee, in the last mentioned suit is entitled to a decree; and they accordingly reverse the principal sudder ameen's decision, and decree for the appellant as in case No. 309 with costs.

DECISIONS

OF THE

SUDDER DEWANNY ADAWLUT,

Recorded in English,

IN CONFORMITY TO ACT XII. 1843,

IN

1845:

With Indexes of Names of Parties, and the Causes of Action, and Principal Points touched upon in the Decisions.

CALCUTTA:

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1846.

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